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June 28, 2012

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**By ECFS**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

RE: *Implementation of the Pay Telephone Reclassification and  
Compensation Provisions of the Telecommunications Act of 1996  
Petitioners' Alternative Rulemaking Proposal*  
**CC Docket No. 96-128**

Dear Ms. Dortch:

Martha Wright, *et al.* ("Petitioners"), by and through her attorneys, respectfully submit into the record of the above-referenced proceeding this additional information in support of the Petitioners' Alternative Rulemaking Proposal (the "Alternative Proposal"). In particular, the Petitioners are submitting information relating to testimony provided in a recent hearing before the New Mexico Public Regulation Commission. As shown below, the transcript, along with the other submissions regarding the statements in the hearing, provides updated information from the Inmate Telephone Service Providers that is highly relevant in the instant proceeding.

By way of background, the New Mexico PRC has ongoing proceedings to reform the inmate telephone service industry in New Mexico. The attached transcript is from a Hearing held on May 2, 2012, in the proceeding to address the following issues:

(1) establishing rate caps; (2) adoption of existing contracts IOSPs have with institutional facilities; (3) creating consumer protection criteria; (4) identifying and prescribing complaint procedures; (5) developing any other required transparency provisions; (6) addressing service quality issues; (7) establishing notices and information at facilities; and (8) establishing variance/waiver processes at the Commission.<sup>1</sup>

In connection with the consideration of the New Mexico NPRM, a hearing was held, and the transcript, attached as Exhibit B, was made of the hearing.

While most of the hearing related to the specifics of the New Mexico regulation of the inmate telephone service, comments by the representatives of Securus Technologies and Global Tel\*Link, both of whom have been active in the instant docket, shed important light on recent developments in the industry since the Commission sought comment on the Alternative Proposal in 2007.

<sup>1</sup> Notice Of Proposed Rulemaking For The Purpose Of Establishing A Rule For Institutional Operator Service Providers, Case No. 10-00198-UT, rel. Jan. 19, 2012 (*See Exhibit A*).

In particular, Securus confirmed that that there are very few or no facilities “from which an inmate can only make a collect call.”<sup>2</sup> This information is important as the Commission considers the Alternative Proposal, as there were two proposed fees, one for credit/debit, and one for collect calls. If, in fact, Securus is correct that there are no facilities in existence from which calling collect is the only option, then the Commission can merely adopt the Petitioner’s proposal to set the benchmark rates for all interstate calls at \$.20, as specified in the Alternative Proposal.

At the very least, this information is contrary to past comments submitted by Securus in the instant proceeding. Specifically, Securus previously stated that “a majority of the inmate calls are collect”, and cited an earlier letter from Securus to then-Chairman Martin.<sup>3</sup> To the extent that the industry has changed that dramatically in the past three years, so that the then-majority method of making calls by inmates has now disappeared, the Commission should take this into account when reaching its decision in the instant matter.

Next, the following exchange occurred between NM PRC Commissioner Marks, and Mr. John Reynolds, an analyst for the NM PRC:

MR. REYNOLDS: I was going where you started to go. I think they do want calls to be made, that's clear. But there's a wide divergence of rates in New Mexico and I'm not sure that IOSPs are all that keen in publicizing that -- the range of rates in New Mexico. Some of the rates are quite high compared to others.

COMMISSIONER MARKS: But the inmate can't decide which correctional facility they are going to get placed in to get the cheaper rates; right?

MR. REYNOLDS: That's correct.

COMMISSIONER MARKS: Now, the rates are going to be fairly consistent between whether it's a prepaid account or a collect call?

MR. REYNOLDS: Across facilities, no.

COMMISSIONER MARKS: No, within a facility.

MR. REYNOLDS: Within a facility? I mean, there are different rates for different types of calls -- collect calls, prepaid collect calls, or calling card calls.

COMMISSIONER MARKS: Okay.<sup>4</sup>

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<sup>2</sup> *Hearing Transcript*, pg. 52 (“Even if it’s a facility from which an inmate can only make a collect call, which truly I don’t think exists anymore, but if they did, the inmate would place the call to a person.”).

<sup>3</sup> *See Ex Parte Submission of Securus Technologies, Inc.*, pg. 2 (Dec. 17, 2008)(citing Letter from Stephanie A. Joyce to Chairman Kevin J. Martin (May 23, 2008)(see Exhibit C).

<sup>4</sup> *Hearing Transcript*, pg. 54-55.

This exchange illustrates two of the points that the Petitioners have been making since they filed their lawsuit in 2000 (which, as shown in Exhibit D, was referred to the FCC to act “with dispatch” almost eleven years ago), namely that: (1) inmates have no choice in the selection of their telephone service provider, and (2) that the rates charged by the inmate telephone service providers to the inmates’ families are not only widely divergent among the various states, but also among facilities in the same state.

The Hearing Transcript also reveals that Securus and Global Tel\*Link are willing to accept a tiered plan for establishing rates for inmate calls. Previously, the Petitioners and Pay Tel Communications had advocated that the Commission could adopt a tiered plan for the purposes of dealing with profitability concerns with smaller facilities. As reflected in the transcript, both Securus and Global Tel\*Link also agree that a tiered system to take into account these smaller facilities is acceptable. Specifically, Global Tel\*Link stated that it “would support” NM PRC plans if it “wanted to go to a tier.”<sup>5</sup> Securus also agreed.<sup>6</sup> Thus, at least three of the major inmate telephone service providers are now on record agreeing with the Petitioners that a tiered system would be satisfactory to resolve profitability concerns at smaller facilities.

Finally, attached as Exhibit E, are recent amendments to the contract between Securus and the Florida Department of Corrections. Previously, Securus had stated that “Inmate contracts are not ‘being renegotiated’ unless they are close to expiry.”<sup>7</sup> It stated that there was only one exception, that being the Department of Corrections for the State of Indiana.

However, as shown in Exhibit E, the State of Florida and Securus have amended their agreement on four occasions since its execution in 2007. In fact, the two most recent amendments have occurred in the past six months! Among the modifications in the amendments are the rates to be charged inmates for telephone service. As such, it is clear that the Petitioners’ proposal for a 12-month period to reform existing agreements with the eventual FCC decision in the instant proceeding was not overly burdensome, and completely reasonable.

In light of the foregoing, the Petitioners respectfully request that the Commission follow the order from the D.C. Circuit Court, act “with dispatch”, and grant the Alternative Proposal.

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<sup>5</sup> *Hearing Transcript*, pg. 86.

<sup>6</sup> *Hearing Transcript*, pg. 83.

<sup>7</sup> *Letter to Chairman Martin*, pg. 9 (July 7, 2008)(see Exhibit F).

Respectfully submitted,



Lee G. Petro

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*Counsel for Martha Wright, et al.*

Attachments

*cc (via electronic mail) :*

Chairman Julius Genachowski  
Michael Steffen, Legal Advisor to Chairman Genachowski  
Commissioner Robert McDowell  
Christine Kurth, Legal Advisor to Commissioner McDowell  
Commissioner Mignon Clyburn  
Angela Kronenberg, Legal Advisor to Commissioner Clyburn  
Commissioner Jessica Rosenworcel  
Priscilla Delgado Argeris, Legal Advisor to Commissioner Rosenworcel  
Commissioner Ajit Pai  
Nicholas Degani, Legal Adviser to Commission Pai  
Sean Lev, Acting General Counsel  
Julie Veach, Deputy General Counsel  
Victoria Goldberg – Acting Chief, Pricing Policy Division, Wireline Competition Bureau  
Deena Shetler – Associate Bureau Chief, Wireline Competition Bureau  
Nicholas Alexander – Deputy Division Chief, Pricing Policy Division, Wireline Competition Bureau  
Pamela Arluk – Assistant Division Chief, Pricing Policy Division, Wireline Competition Bureau  
Marcus Maher – Office of General Counsel  
Raelynn Remy – Office of General Counsel

**EXHIBIT A**

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

<b>PETITION TO COMMENCE RULEMAKING</b>	)	
<b>PROCEEDING FOR INSTITUTIONAL</b>	)	
<b>OPERATOR SERVICE PROVIDERS</b>	)	
	)	<b>Case No. 10-00198-UT</b>
<b>INMATE CALLING SOLUTIONS, LLC, AND</b>	)	
<b>PUBLIC COMMUNICATIONS SERVICES,</b>	)	
<b>INC.,</b>	)	
<b>Petitioners.</b>	)	
	)	

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**NOTICE OF PROPOSED RULEMAKING FOR THE PURPOSE OF  
ESTABLISHING A RULE FOR  
INSTITUTIONAL OPERATOR SERVICE PROVIDERS**

NOTICE IS HEREBY GIVEN that the New Mexico Public Regulation Commission ("Commission") is commencing a rulemaking proceeding for the purpose of creating a rule under 17.11.xx NMAC governing the provision of telecommunications services by institutional operator service providers ("IOSPs"). This matter comes before the Commission pursuant to Decretal Paragraph C of its own *Final Order Partially Approving Certification of Stipulation*, issued in three dockets<sup>1</sup> on June 24, 2010, and the *Joint Petition to Commence Rulemaking*, filed in this docket by Public Communication Services, Inc. ("PCS") and Inmate Calling Solutions, LLC d/b/a ICSolutions ("ICS") on July 1, 2010. Whereupon, having reviewed the record and being duly advised,

**THE COMMISSION FINDS AND CONCLUDES:**

1. On July 6, 2010, the Commission's Telecommunications Bureau Staff ("Staff"), PCS, and ICS filed amended stipulations in three cases. The parties agreed to, among other things, initiate a rulemaking

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<sup>1</sup> *In the Matter of a Commission Inquiry into the Rates and Charges of Institutional Operator Service Providers* (Case No. 07-00316-UT); *In the Matter of an Investigation into the Billing Practices of Public Communications Services, Inc.* (Case No. 07-00364-UT); and *In the Matter of an Investigation of Non-Tariffed Charges of Institutional Operator Service Providers* (Case No. 07-00442-UT). The Commission issued an *Order to Amend Final Order Partially Approving Certification of Stipulation* on July 7, 2010.

for the purpose of developing rules and regulations specifically applicable to all IOSPs that would address, but not be limited to the aforementioned rate cap schedule, phase-in language for existing contracts, consumer protection issues, complaint procedures, rate/fee transparency provisions, service quality, letters to facilities and variance/exception processes.

*Amended Joint Stipulation between ICS and Staff*, paragraph 24, 07-00316-UT and 07-00442-UT, filed July 6, 2010 and *Amended Joint Stipulation between PCS and Staff*, paragraph 29, 07-00316-UT, 07-00364-UT, and 07-00442-UT, filed July 6, 2010. The Commission set a deadline for initiating the rulemaking process and directed the parties to include other stakeholders in it. *Final Order Partially Approving Certification of Stipulation*, paragraph C, 07-00316-UT, 07-00364-UT, and 07-00442-UT, filed June 24, 2010.

2. PCS and ICS filed their *Joint Petition to Commence Rulemaking* in this docket on July 1, 2010, and on August 9, 2010 the parties, plus Staff, filed their *Amended Joint Petition to Commence Rulemaking*. The *Amended Joint Petition* had a draft notice of proposed rulemaking attached to it.

3. On December 23, 2010, the Commission filed its *Order to File Consensus Draft Rule*. Decretal Paragraph B of the order directed PCS and ICS to file a Notice of Proposed Rulemaking in Case No. 10-00198-UT which “attaches a complete consensus, draft Rule Concerning Institutional Operator Service Providers no later than February 15, 2011.” PCS and ICS complied with this directive in a February 15, 2011 filing, representing that “[t]he attached form of rule was the result of extensive efforts and multiple working sessions among PCS, ICS, global Tel\* Link Corporation, Securus Technologies, Inc., and T-Netix Telecommunications Services, Inc., and Staff....”

*Notice of Compliance with Order to File Consensus Draft Rule*, p. 1. A copy of the draft rule is attached hereto as Exhibit 1.

4. The Commission has jurisdiction over telecommunications companies and specifically IOSPs in the State of New Mexico pursuant to the New Mexico Constitution, Article XI, Section 2; NMSA 1978, §§ 63-9A-1 *et seq.* (New Mexico Telecommunications Act); NMSA 1978, §§ 63-7-1 *et seq.*; and NMSA 1978, §§ 8-8-4 *et seq.* (the Public Regulation Commission Act). The Commission has authority to enact rules regulating IOSPs pursuant to the same.

5. Pursuant to the *Final Order Partially Approving Certification of Stipulation*, the purpose of this notice is to seek comments for the purpose of developing a rule specifically applicable to all IOSPs that would address: establishing rate caps; adoption of existing contracts IOSPs have with institutional facilities; creating consumer protection criteria; identifying and prescribing complaint procedures; developing any other required transparency provisions; addressing service quality issues; establishing notices and information at facilities; and establishing variance/waiver processes at the Commission.

6. The Commission also seeks comments on which initial rate caps should be included in the rule. Specifically, the Commission seeks comments on whether the rate caps established in docket number 07-00316-UT should be the initial rate caps under the rule.

7. All IOSPs presently doing business within New Mexico and any IOSPs that might want to do business in New Mexico in the future are encouraged to participate



in the rulemaking proceeding. Other entities or individuals are also encouraged to participate.

8. This Notice of Proposed Rulemaking constitutes due and lawful notice to all potentially interested parties.

9. All interested persons should be afforded the opportunity to receive notice of, to comment on, provide substantive language for the attached form of proposed rule, including developing alternatives for any specific category/provision as well as the issues and topics set out in this Order, together with any other issues of relevance to this proceeding.

10. Commission Rule 1.2.3.7(B) NMAC (“Ex Parte Communications”) draws a distinction applicable to rulemaking proceedings between communications occurring before the record has been closed and communications occurring after the record has been closed. It defines only the latter as “ex parte communications.” In order to ensure compliance with Rule 1.2.3.7(B) NMAC, the Commission should set a date on which it will consider the record to be closed. The Commission finds that date shall be the earlier of thirty (30) days following the **May 2, 2012, Public Hearing**, that is, **June 1, 2012**, or the date a Final Order is issued in this case. The setting of that record closure date will permit Commissioners and Commission Counsel to conduct follow-up discussions with parties who have submitted initial or response comments to the Commission’s proposed rule amendments or responses to any bench requests. However, this action should not be interpreted as extending the time during which parties may file comments or response comments, or as allowing the filing of other types of documents in this case.

11. Remarks made during the drafting of the proposed rule and any items of information that have been submitted heretofore are not evidence and are not part of the record in the rulemaking. Any person having submitted such information who desires it to be considered hence as part of the rulemaking process should file it as a formal comment, pursuant to Rule 17.1.120.9 NMAC.

**IT IS THEREFORE ORDERED:**

- A. A rulemaking proceeding should be, and hereby is, instituted in this proceeding.
- B. The Commission seeks comment from all interested persons concerning the topics included in the proposed form of rule, attached as Exhibit 1 to this Order.
- C. This *Notice of Proposed Rulemaking* shall constitute due and lawful notice to all potentially interested persons.
- D. All participants in Case Nos. 07-00316-UT, 07-00364-UT, and 07-00442-UT and all names who appear on the official service lists of those proceedings as well as all IOSPs in New Mexico shall be included on the official Certificate of Service for this rulemaking.
- E. The Commission specifically invites the NM Attorney General, NM Association of Counties, NM Municipal League, NM Sheriffs' and Police Association, NM Department of Corrections, NM Criminal Justice Association, NM Sentencing Commission, the State Bar of New Mexico, New Mexico Legal Aid, and the American Civil Liberties Union ("ACLU") of New Mexico to participate.
- F. Any person wishing to provide comment for incorporation into the rule

shall do so by submitting written comments no later than March 12, 2012. Any person wishing to respond to comments may do so by submitting written responses no later than March 26, 2012. Comments to the proposed rule shall state and discuss the particular reason for the language and shall include all specific language necessary or appropriate to incorporate into the rule. Specific language to the proposed rule shall be provided in a format consistent with that of the New Mexico Administrative Code.

G. All pleadings, including comments, shall bear the caption and case number set out on the first page of this Notice. Comments on the proposed rule shall be filed with the Commission's Records Division, at the address set forth herein.

H. A public hearing on the proposed rule language shall be presided over by the Commission Chairman or his designee, and shall begin at 1:00 p.m. on May 2, 2012 at the following location:

4<sup>th</sup> Floor Hearing Room  
PERA Building  
1120 Paseo de Peralta  
Santa Fe, New Mexico 87501  
Telephone: (1-800-827-4500)

I. All persons attending the hearing should be prepared to address the issues set forth herein. Interested persons should contact the Commission to confirm the date, time and place of any public hearing, because hearings are occasionally rescheduled. Any person with a disability requiring special assistance in order to participate in the Hearing should contact Ms. Cecilia Rios at 827-6947 at least 48 hours prior to the commencement of the Hearing.

J. Pursuant to NMSA 1978, § 8-8-15(B), this *Notice of Proposed*

*Rulemaking*, including a completed form of Attachment A, shall be mailed **at least thirty days prior to the hearing date** to all persons who have made a written request for advance notice and to all IOSPs operating within the State of New Mexico or in good standing and eligible to operate within the State of New Mexico. Copies of this *Notice of Proposed Rulemaking* shall be provided promptly by e-mail or by facsimile transmission to any persons who have so requested.

K. This *Notice of Proposed Rulemaking without Exhibit 1* shall be published in at least two newspapers of regular circulation in the State of New Mexico, and in the NEW MEXICO REGISTER. Affidavits attesting to the publication of this *Notice of Proposed Rulemaking* as described above shall be filed in this docket.

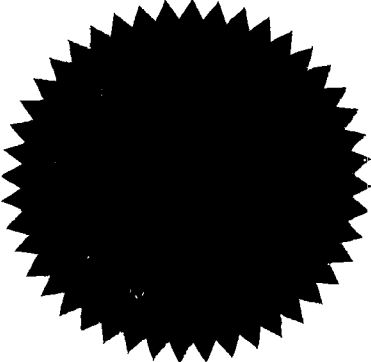
L. In addition, this *Notice of Proposed Rulemaking* shall be posted on the Commission's official Web site.

M. Copies of any forthcoming final order adopting a new rule shall be mailed, along with copies of the particular rule to all affected telecommunications companies, all commenters in this case, and all individuals requesting such copies.

N. This *Notice of Proposed Rulemaking* is effective immediately.

ISSUED under the Seal of the Commission at Santa Fe, New Mexico, this 19<sup>th</sup>  
day of January, 2012.

NEW MEXICO PUBLIC REGULATION COMMISSION



*Patrick H. Lyons*

PATRICK H. LYONS, CHAIRMAN

*Theresa Becenti-Aguilar*

THERESA BECENTI-AGUILAR, VICE CHAIR

*Jason Marks*

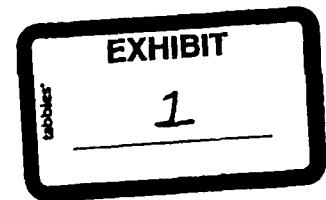
JASON A. MARKS, COMMISSIONER

*Douglas J. Howe*

DOUGLAS J. HOWE, COMMISSIONER

*Ben L. Hall*

BEN L. HALL, COMMISSIONER



**TITLE 17            PUBLIC UTILITIES AND UTILITY SERVICES**  
**CHAPTER 11       TELECOMMUNICATIONS**  
**PART XX           INSTITUTIONAL OPERATOR SERVICE PROVIDERS**

**17.11.XX.1        ISSUING AGENCY:**

Public Regulation Commission.

**17.11.XX.2        SCOPE:**

This rule is applicable to all Institutional Operator Service Providers ("IOSPs") certified to operate within the State of New Mexico and also to those IOSPs who apply to the Commission to operate within the State of New Mexico.

**17.11.XX.3        STATUTORY AUTHORITY:**

This rule is adopted pursuant to Article XI, Section 2 of the New Mexico Constitution and NMSA 1978, §§ 8-8-4 *et seq.*, §§ 63-7-1 *et seq.*, and §§ 63-9A-1 *et seq.* (New Mexico Telecommunications Act).

**17.11.XX.4        DURATION:**

Permanent.

**17.11.XX.5        EFFECTIVE DATE:**

This rule shall be effective on its date of publication in the New Mexico Register in accordance with NMSA 1978, § 14-4-5.

**17.11.XX.6        OBJECTIVE:**

The purpose of this rule is to establish statewide uniform regulations governing IOSPs so as to ensure reasonable rate regulation for IOSPs while protecting consumers against unreasonable rates and inadequate service.

**17.11.XX.7        DEFINITIONS:**

As used in this rule, the following terms have the meanings provided, unless a different meaning is clearly expressed in the context in which the term is used. The Commission will interpret the definitions broadly enough to ensure compliance with the purpose of this rule.

A. **Commission** means the New Mexico Public Regulation Commission.

B. **Complaint** means an oral or written expression of dissatisfaction with an IOSP's rates, fees, charges, or services, including a request for repair involving service outage, made to the IOSP, Correctional Institution, or to the Commission by or on behalf of a Consumer.

- C. **Consumer** means a person who is an account holder or initiates or receives a telephone call from an Institutional Phone. For purposes of 17.11.XX.12, 17.11.XX.13, and 17.11.XX.14(F) NMAC, a Consumer also includes one who funds a prepaid account for IOSP services.
- D. **Correctional Institution** means a jail, prison, penal facility or other confinement facility.
- E. **Institutional Operator Service** means intrastate telecommunications services initiated by a confined person in a Correctional Institution that includes, as a component, automatic or live assistance to arrange for completion or billing, or both, of an intrastate telephone call, consistent with 47 C.F.R. § 64.708(i).
- F. **Institutional Operator Service Provider (IOSP)** means a provider of Institutional Operator Service.
- G. **Institutional Phone** means a telephone instrument accessible only to confined persons in a Correctional Institution.
- H. **Local Call** means a telephone call which originates on an Institutional Phone and terminates to a landline phone within the same local calling area as defined by the local exchange company for the area in which the call originates.
- I. **Non-landline Call** means a call that originates from an Institutional Phone and terminates at any telecommunications device other than a landline phone.
- J. **Postpaid Collect Call** means a call for which the rate or charge is billed to the call recipient on the monthly bill from the recipient's local telephone company, or from the IOSP, or from a third-party IOSP billing agent.
- K. **Prepaid Collect Call** means that the rate or charge of the call is deducted from an account funded in advance by the call recipient for this purpose.
- L. **Prepaid Institutional Call** means a call for which the confined person pays the rate or charge for the call by purchasing, generally from the commissary at the Correctional Institution, either a prepaid card from which the rate or charge for the call is subtracted or, if without a prepaid card, by setting up a prepaid account from which the rate or charge of the call can be deducted.
- M. **Rate Cap** means the maximum allowable rates, fees and charges for intrastate calls initiated from an Institutional Phone that is not subject to a variance.
- N. **Toll Call** means a telephone call which originates on an Institutional Phone and terminates to a landline phone in different local calling areas as defined by the local exchange company for the area in which the call originates.

**17.11.XX.8 EXEMPTIONS:**

IOSPs are exempt from 17.11.15 NMAC, Rule Concerning Payphone Providers, 17.11.16.11 NMAC, Consumer Protection, Access to Service and Rate Information, and SCC 94-02-TC, Rule Concerning Operator Services Providers.

**17.11.XX.9 APPLICATION FOR CERTIFICATION OF REGISTRATION:**

A. Providers currently offering operator service to persons housed in Correctional Institutions in New Mexico as of the Effective Date of this rule shall submit an expedited application for registration in the format prescribed by the Commission within ninety (90) days of the Effective Date of this rule as described in this section.

- (1) Staff shall review an application for a certificate of registration within thirty (30) calendar days after filing to determine whether it is complete. If the application is complete the Director of the Utility Division, or the Director's designee, shall issue a certificate of registration if it finds that the applicant is fit to provide Institutional Operator Services, and that issuance of the certificate of registration is in the public interest.
- (2) If the application is incomplete, Staff will return it to the applicant. A certificate of registration may be denied for failure to provide the required information or documents, or for failure to remit the required fees. Notice of denial will include a statement indicating the reason for rejection. Denial may be cured if corrected within thirty (30) days of service of the Notice.

B. Providers seeking to offer or provide any telecommunications service through an Institutional Phone must register with the Commission in the format provided by the Commission.

- (1) In addition to the application for registration, the IOSP must file a copy of the information to be posted or supplied at every Institutional Phone or otherwise provided to the confined persons containing all the information as spelled out in this rule.
- (2) Registration may be denied for failure to provide the required information or documents, or for failure to remit the required fees. Notice of denial will include a statement indicating the reason for rejection. Denial may be cured if the stated reasons for rejection are made within thirty (30) days of service of the Notice.

C. Registration shall be renewed annually by filing an annual report on a form prescribed by the Commission. The annual report shall be submitted by April 1<sup>st</sup> of each year and shall contain information regarding the prior year. At a minimum, the IOSP shall update any information contained in its original application for registration or last annual report, as appropriate.



**17.11.XX.10      CONTENTS OF APPLICATION FOR REGISTRATION:**

An application for a certificate of registration to provide Institutional Operator Services must contain:

- A. the name, address, e-mail address and telephone number of the applicant;
- B. the name, address, e-mail address, and telephone number of the person responsible for regulatory contacts and customer dispute resolution on behalf of the applicant;
- C. a description of the applicant's existing operations and general service and operating areas in any other jurisdictions;
- D. a statement that the applicant is aware of and will comply with the Commission's rules;
- E. disclosure of any formal actions against it by any court or state or federal regulatory agency that resulted in any type of penalty or sanctions within the five (5) years prior to the date of filing the application. If such action has occurred, the applicant shall file a report regarding such action and any remedial actions taken;
- F. disclosure of any settlement or stipulation with any state or federal regulatory agency within the three (3) years prior to the date of filing the application that resulted in a payment to the agency with or without any admission of wrongdoing;
- G. if the applicant is a corporation, evidence that the applicant is authorized by the Corporations Bureau of the Commission to do business in New Mexico and that it is in good corporate standing in New Mexico;
- H. if the applicant is other than a corporation, a description of the form of ownership, the names and addresses of all principal owners and managers, the applicant's agent for service of process in New Mexico, and the date the entity was created;
- I. initial tariffs for regulated telecommunications services, including a narrative description of the services to be offered and the geographic area and markets to be served. Initial tariffs shall not contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms, or conditions; and
- J. if the applicant is a regulated carrier, any other information the Commission may reasonably require to accomplish the purpose of this rule.

**17.11.XX.11      DISCLOSURE OF RATES, FEES AND CHARGES:**

- A. All IOSPs must disclose their rates, fees, and charges. This requirement shall not apply to increases or decreases in taxes or other government-related fees.

- (1) For all Local Calls, intrastate Toll Calls and Non-Landlines Calls, the IOSP shall comply with all rate disclosure requirements adopted by the Federal Communications Commission in Title 47 C.F.R. § 64.710 (Operator Services for Prison Inmate Phones), including any amendments thereto.
- (2) Rates, fees and charges applied pursuant to 17.11.XX.14(F) NMAC shall be made available to the Consumer prior to the commencement of the transaction without the Consumer having to dial a separate telephone number or access a separate web site. Such information shall include an equally prominent disclosure of alternative funding or refunding mechanisms that are free of transactional fees.

B. The information required by this section must be delivered to the Correctional Institution by the IOSP for posting on or near the Institutional Phone, in plain view of confined persons, provided that such signage is allowed by the Correctional Institution. The posted signage must clearly and simply disclose all applicable rates, fees and charges for Institutional Operator Services set forth in this rule and provide the contact information for the IOSP for Consumer complaints as well as the mailing address of the Commission's Consumer Relations Division for unresolved Consumer complaints.

C. The IOSP is to disclose all rate information, including all applicable per-call and per-minute rates in simple and clear language.

D. All required information and instructions, if allowed by the Correctional Institution, must be provided in both English and Spanish and the IOSP must supply each facility it serves with a display placard or other means of informing confined persons.

E. Consumers who are not confined persons shall be advised of contact information for Consumer complaints on their bill when that bill includes charges for postpaid collect calls, or each time a funding transaction related to a prepayment account takes places, and shall have access to the IOSP's customer service representative.

**17.11.XX.12 COMPLAINTS:** Complaints regarding violations of this rule will be governed by 1.2.2.13 through 1.2.2.20 NMAC and 17.11.16.22 NMAC. All other procedural matters will be in accordance with 1.2.2 and 1.2.3 NMAC.

**17.11.XX.13 ENFORCEMENT:**

- A. Initiation of proceedings: Upon receipt of a Complaint alleging a violation of this rule, or on its own motion, the Commission may initiate proceedings in accordance with its Rules of Procedure NMAC 1.2.2.13 through 1.2.2.15.
- B. Penalties: Following notice and hearing and upon a proper finding that a violation of this rule has occurred, the Commission may, consistent with its statutory authority, assess fines or penalties or other such remedies as may be provided for by law including revocation of authority to provide Institutional Operator Service. The remedy imposed

by the Commission may be reduced or rescinded if violations or findings of non-compliance are corrected within 30 days from the date of the Commission's Final Order.

- C. Other penalties: The assessment of any penalty by the Commission for a violation of this rule does not preclude the assessment of a penalty by any other New Mexico agency for violation of its rules arising from the same cause.

**17.11.XX.14      INSTITUTIONAL OPERATOR SERVICE RATES, FEES AND CHARGES:**

- A. All IOSPs must file tariffs with the Commission which set forth the services provided along with any rates, fees, or charges for those services and list each Correctional Institution to which those rates, fees, or charges apply. Tariffs shall also identify the billing and collection methods utilized by the IOSP such as Postpaid Collect, Prepaid Collect, Prepaid Institution and any other payment alternatives. No tariff or proposed tariff shall contain misleading, potentially misleading, deceptive, or fraudulent names, rates, fees, charges, terms or conditions.
- B. Rate Caps shall be determined periodically by the Commission on its own motion following notice and a public hearing, but no more frequently than once every three years. In the absence of a hearing by the Commission, the Rate Caps previously established will remain in effect.
- C. Any changes in IOSP rates, fees or charges and any cessation or commencement of Institutional Operator Service at a particular Correctional Institution resulting from a new, renewed, or amended contract between an IOSP and the Correctional Institution must be reflected in a proposed tariff amendment filed no later than ninety (90) days after the final award of the contract to the IOSP or after any agreement to change the rates, fees or charges is reflected in a renewed or amended contract.
  - (1) The IOSP shall file with the Commission an original and five (5) copies of the proposed tariff changes within the time frame provided for in this rule. The IOSP shall include in its filing a sequentially numbered transmittal letter, (e.g., 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff change shall comply with all applicable Commission rules. The proposed tariff changes may go into effect ten (10) business days after the tariff filing unless Staff notifies the IOSP within said ten (10) business days of its concerns regarding the proposed tariff changes. If Staff and the IOSP are able to resolve Staff's concerns within ten (10) business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.
  - (2) If Staff and the IOSP are unable to resolve Staff's concerns, Staff shall file a protest with the Records Management Bureau of the Administrative Services Division, and promptly send a copy to the IOSP and the proposed tariff change shall not go into effect. The Records Management Bureau shall assign a docket number to Staff's protest. Staff's protest shall include a case caption and a heading that states "Staff Protest". The protest shall include as an attachment the proposed tariff changes filed

by the IOSP and any additional information furnished to Staff by the IOSP. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.

- (3) On the same day it files paper copies of the proposed tariff changes with the Commission, the IOSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The Commission may prescribe additional form, content, manner of filing, or other requirements.

D. Any other changes in IOSP rates, fees, charges, or type of service, and any addition of a new service must be reflected in a proposed tariff amendment. No such change may be effectuated by the IOSP prior to Commission approval of the tariff amendment.

- (1) The IOSP shall file with the Commission an original and five (5) copies of the proposed tariff changes within the time frame provided for in this rule. The IOSP shall include in its filing a sequentially numbered transmittal letter, (*e.g.*, 2010-1, 2010-2, etc.) containing a description of the proposed tariff changes. The proposed tariff change shall comply with all applicable Commission rules. The proposed tariff changes may go into effect ten (10) business days after the tariff filing unless Staff notifies the IOSP within said ten (10) business days of its concerns regarding the proposed tariff changes. If Staff and the IOSP are able to resolve Staff's concerns within ten (10) business days after the tariff filing, the proposed tariff changes may go into effect and no public hearing shall be required.
- (2) If Staff and the IOSP are unable to resolve Staff's concerns, Staff shall file a protest with the Records Management Bureau of the Administrative Services Division, and promptly send a copy to the IOSP and the proposed tariff change shall not go into effect. The Records Management Bureau shall assign a docket number to Staff's protest. Staff's protest shall include a case caption and a heading that states "Staff Protest". The protest shall include as an attachment the proposed tariff changes filed by the IOSP and any additional information furnished to Staff by the IOSP. The applicant shall have the burden of showing, after notice and hearing, why the proposed new service, promotion, or tariff change is in the public interest.
- (3) On the same day it files paper copies of the proposed tariff changes with the Commission, the IOSP shall also submit an electronic copy of the transmittal letter containing the identity of the telecommunications company, a summary of the proposed new service, promotion or tariff change, and its effective date. The Commission may prescribe additional form, content, manner of filing, or other requirements.

E. Every Institutional Phone in New Mexico shall provide access to the services listed below without the use of coins or cards of any type, and without any charge to the Consumer:

- (1) Any call to obtain a refund; and
  - (2) Access to automated operator services necessary to establish a call.
- F. An IOSP may not bill any rate, fee, or charge that is not approved by the Commission.
- G. An IOSP may not bill or charge any transactional fee in connection with the establishment of, funding to, or refunding from an account in the Consumer's name used for the prepayment of Institutional Operator Service that has not been previously approved for that purpose by the Commission.
- H. An IOSP may assess fees that are included in the IOSP's filed tariffs.
- I. Effective Dates: The Rate Caps established pursuant to this rule
- (1) will not apply to any contract that was executed prior to the Effective Date of this rule,
  - (2) will not apply to any contract for which a response to a Request for Proposal was submitted prior to the Effective Date of this rule,
  - (3) will apply to any contract executed ninety (90) days following the Effective Date of this rule, and
  - (4) will apply to any contract that is renewed or renegotiated ninety (90) days following the Effective Date of this rule.

**17.11.XX.15      RESPONSIBILITIES OF THE INSTITUTIONAL OPERATOR  
SERVICE PROVIDER:**

- A. An IOSP shall not contract for any intrastate operator services or interexchange services with any entity that is out of compliance with the applicable certification requirements of the Commission.
- B. The IOSP shall be responsible for all public access line charges associated with the provision of Institutional Operator Service.
- C. The IOSP shall be responsible for paying all required regulatory fees to the Commission.
- D. Subject to compliance with any access requirements of the Correctional Institution, IOSPs will make available to the Commission, subject to notice and coordination, any Institutional Phone for purposes of making test calls, free of charge, to telephone numbers of the Commission's choosing.

- E. All Institutional Phones and the telecommunications facilities used for the transmission of service are subject to periodic inspections to ensure compliance with Commission requirements. Findings of non-compliance will be brought to the attention of the IOSP and the Correctional Institution by letter and the IOSP will have thirty (30) days to restore compliance with Commission requirements.
- F. The IOSP shall be responsible for repairing, servicing and maintaining in good repair the Institutional Phones through which it provides service.
- G. All Institutional Phones installed in New Mexico shall comply with state and local laws, Commission rules, current National Electrical Code and National Electrical Safety Code requirements, and the generally accepted telecommunications industry technical standards of the National Association of Regulatory Utility Commissioners.
- H. All calls initiated from an Institutional Phone will be outbound automated operator calls that are either Postpaid Collect Call, Prepaid Collect Call or Prepaid Institution Call.
- I. The minimum allowance for the duration of a call initiated from an Institutional Phone shall be 15 minutes before it is automatically terminated by the IOSP, unless the IOSP certifies in writing that the Correctional Institution has imposed a shorter limit.
- J. No more than three Institutional Phones will share a common voice-grade (non-broadband) access line or channel, unless otherwise specifically authorized by the Commission.
- K. Institutional Phones operating in New Mexico must comply with all applicable federal, state and local laws regarding accessibility by hearing impaired or physically disabled persons.
- L. All IOSPs must provide both local and toll service at each Correctional Institution they serve.
- M. Institutional Operator Service transmission quality shall be at least equivalent to generally accepted industry standards for wireline, voice-grade circuits, except that IOSPs will not be held responsible for calls terminating to cordless landlines, cell phones, or other non-traditional landline devices.

**17.11.XX.16      RESTRICTIONS ON INSTITUTIONAL TELEPHONE SERVICE:**

Operators of Correctional Institutions have the authority to limit or deny access to Institutional Phones telephones at times and in circumstances deemed proper by the Correctional Institution.

**17.11.XX.17      RATE VARIANCES:**

- A. The Commission may permit an IOSP to impose rates higher than the Rate Caps as provided for by addendum to this rule as may be amended from time to time or as stated in a separate Commission Order for good cause shown. Such permission shall not be unreasonably withheld.
- B. An IOSP seeking a variance under this rule must file a Petition for Variance with the Commission providing the following information:
  - (1) The Correctional Institution(s) at which the higher rate will be applied.
  - (2) The rate to be applied and the respective existing Rate Cap.
  - (3) The reason for which a higher rate will be applied shall include the following information about the proposed service for the call type(s) for which the variance is sought:
    - (a) Projected monthly and yearly call volume by call type
    - (b) Projected monthly and yearly revenue by call type
    - (c) Projected monthly and yearly average call duration by call type
- C. The Petition must include a sworn statement by a knowledgeable representative of the Petitioner attesting to the truth and accuracy of its contents.
- D. The Petition shall be accompanied by a proposed tariff change that incorporates the higher rate that the Petitioner seeks to impose. All IOSP tariffs shall include a section for rate variances in which all such higher rates are to be listed.
- E. At the request of the Petitioner, the information provided pursuant to subsections (B)(1) and B(3) herein will be treated as confidential and will not be disclosed to any person other than an employee or member of the Commission until the Petitioner consents in writing to such disclosure.
- F. Staff shall review the Petition for Variance within thirty (30) days to determine whether it is supported by the information provided. Staff may file a written statement with the Commission in support of or opposition to the Petition within the same thirty-day (30-day) period. The IOSP shall have ten (10) days to respond to any Staff position.
- G. In the absence of any Commission action on the Petition, the Petition will be deemed granted and the proposed tariff change will be deemed approved forty-five (45) calendar days from the filing of the Petition.

- H. IOSP's are not subject to Section 1.2.2.40 NMAC for matters related to rate variances pursuant to this rule.

**17.11.XX.18 CONSUMER PROTECTION:**

- A. The IOSP shall complete a call only upon a positive response from the Consumer that the Consumer accepts all previously disclosed charges for the call. The provider shall allow Consumers the opportunity to decline and thus terminate the call at no charge to the Consumer. If the IOSP does not receive a positive response within a period not exceeding 20 seconds from the last prompt, the call shall be terminated without charge. IOSP's shall not charge for any calls that are not accepted by the called party.
- B. Where not superseded by the express language of this rule, the Commission's Consumer Protection rule, 17.11.16 NMAC, applies, except for those provisions that by their language apply only to non-IOSP's.

**17.11.XX.19 REPORTING REQUIREMENTS:**

- A. Within ninety (90) days of registering as an IOSP, an IOSP shall report to the Commission the type of access lines and the number of Institutional Phones installed at each Correctional Institution it serves. Upon staff request, the IOSP shall update this information.
- B. IOSP's shall provide reports as directed by the Commission in line with existing rules that provide the Commission such authority, to include the revenue at each Correctional Institution.
- C. IOSP's shall report to the Commission not later than April 1 of each year the Complaints it received about the service provided in New Mexico during the preceding calendar year. Complaints shall be categorized by type of Complaint with a description of how each Complaint was handled. The four categories of Complaints are Billing, Service Quality, Rate or Other. The report will incorporate all Complaints made to the Consumer Relations Division of the PRC and/or to the Office of the Attorney General.
- D. Not later than April 1 of each year, Commission Staff will provide a letter to each Correctional Institution with information about the Commission's jurisdiction over IOSP's.

**17.11.XX.20 TRANSFER OF CERTIFICATE:**

Any holder of a certificate of registration to provide Institutional Operator Services in New Mexico seeking to transfer the certificate to another person shall first apply to the Commission for approval of the transfer. The Commission shall approve an application for transfer of a certificate of registration upon receipt of a completed application and a copy of the tariff proposed to take effect upon approval of the transfer. The application shall meet the requirements of 17.11.XX.10 NMAC.



**17.11.XX.21 NOTICE OF CHANGE IN CIRCUMSTANCE:**

An IOSP shall notify the Commission in writing of the following change in circumstances:

- A. a change in the IOSP's name, address, or phone number;
- B. a change in the name, address, or phone number of the person responsible for regulatory contacts and Consumer dispute resolution;
- C. merger of the IOSP with another provider;
- D. acquisition of the IOSP by another provider;
- E. acquisition by the IOSP of another provider;
- F. transfer of the IOSP's certificate;
- G. transfer of a significant portion of the IOSP's assets to another provider; and
- H. any other change in control of the IOSP.

**17.11.XX.22 DISCONTINUANCE OF SERVICE:**

A. Prior to discontinuing service, an IOSP shall, no later than thirty (30) days prior to discontinuing service, file with the Commission a notice of discontinuance of service showing the number of Correctional Institutions affected.

B. This section does not apply to individual service withdrawals of an IOSP.

**17.11.XX.23 WAIVERS:**

The Commission recognizes that public health and safety and the requirements of the Correctional Institution may require exceptions to requirements contained in this rule. In those cases, the IOSP may petition the Commission for a waiver of a particular requirement, which shall not be unreasonably withheld.

**17.11.XX.24 SEVERABILITY:**

If any part of this rule is held invalid, the remainder, or its application to other situations or persons, shall not be affected.

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE PETITION TO  
COMMENCE RULEMAKING PROCEEDING  
FOR INSTITUTIONAL OPERATOR SERVICE  
PROVIDERS.**

**INMATE CALLING SOLUTIONS, LLC AND  
PUBLIC COMMUNICATIONS SERVICES, INC.,**

**PETITIONERS.**

**Case No. 10-00198-UT**

**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the **Notice of Proposed Rulemaking for the Purpose of Establishing a Rule for Institutional Operator Service Providers** adopted January 19, 2012, was sent on January 20<sup>th</sup>, 2012, by first class postage pre-paid mail and, when possible, by electronic mail to the individuals listed below.

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**By electronic mail:**

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**DATED** this 20<sup>th</sup> day of January, 2012.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
\_\_\_\_\_  
Ana C. Kippenbrock, Paralegal

**BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION**

**IN THE MATTER OF THE PETITION TO  
COMMENCE RULEMAKING PROCEEDING  
FOR INSTITUTIONAL OPERATOR SERVICE  
PROVIDERS.**

**INMATE CALLING SOLUTIONS, LLC AND  
PUBLIC COMMUNICATIONS SERVICES, INC.,  
  
PETITIONERS.**

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) **Case No. 10-00198-UT**  
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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the **Notice of Proposed Rulemaking for the Purpose of Establishing a Rule for Institutional Operator Service Providers** adopted January 19, 2012, was sent on January 25th, 2012, by first class postage pre-paid mail and, when possible, by electronic mail to the individuals listed below.

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**DATED** this 25<sup>th</sup> day of January, 2012.

**NEW MEXICO PUBLIC REGULATION COMMISSION**

  
\_\_\_\_\_  
Ana C. Kappenbrock, Paralegal

**EXHIBIT B**

BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

PETITION TO COMMENCE )  
RULEMAKING PROCEEDING FOR )  
INSTITUTIONAL OPERATOR )  
SERVICE PROVIDERS )  
 ) Case No.  
INMATE CALLING SOLUTIONS, LLC, ) 10-00198-UT  
AND PUBLIC COMMUNICATIONS )  
SERVICES, INC., )  
 )  
 )  
Petitioners. )  
\_\_\_\_\_ )

HEARING  
May 2, 2012  
1:00 p.m.  
1120 Paseo de Peralta  
4th Floor Hearing Room  
Santa Fe, New Mexico

APPEARANCES:

COMMISSIONER JASON MARKS  
MS. MARGARET CAFFEY-MOQUIN, Commission Counsel

REPORTED BY: MABEL JIN CHIN, NM CCR #81  
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(3275K) MC



A P P E A R A N C E S

For Utility Division Staff:

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Santa Fe, New Mexico 87505  
BY: MS. CAROL A. CLIFFORD

Also Present: MR. JOHN REYNOLDS  
MR. CURT HOPFINGER

1 SANTA FE, NEW MEXICO, MAY 2, 2012, 1:00 P.M.

2  
3 COMMISSIONER MARKS: We're here on the  
4 record in New Mexico Public Regulation Commission case  
5 10-00198-UT, which is Petition to Commence Rulemaking  
6 Proceeding for Institutional Operator Service  
7 Providers, Inmate Calling Solutions, LLC, and Public  
8 Communication Services, Inc., Petitioners. And we're  
9 here pursuant to the Commission's Notice of Proposed  
10 Rulemaking issued January 19th of this year, in which  
11 the Commission proposed a new rule for institutional  
12 operator service providers, which will be abbreviated  
13 IOSPs.

14 According to what I have in front of me, the  
15 Commission has received both initial and response  
16 comments from Utility Division Staff, from Global  
17 Tel\*Link Corporation, from Securus Technologies and  
18 T-Netix, and from the New Mexico Criminal Defense  
19 Lawyers Association. And again, in each case we have  
20 received two rounds of comments from each of those  
21 commenters, and I'm not aware of any other comment in  
22 the record. Is anyone aware of any other comment in  
23 the record that I have omitted?

24 Let the record reflect there was a lot of  
25 shaking of heads "no."

1           Mr. Albright, before we went on the record  
2   you had indicated that you had prepared a summary  
3   table of issues and had distributed a copy to other  
4   interested parties who are here today; is that  
5   correct?

6           MR. ALBRIGHT: Commissioner Marks, that is  
7   correct. I would like to note that this was served --  
8   was meant as a working copy, and some cases where it  
9   says no comments or proposed changes, those may  
10   reflect, for example, for Securus, it reflects that  
11   they may have made comments on each and every aspect  
12   of the rule but had no proposed changes.

13          So I am prepared to submit this as an  
14   exhibit to facilitate the discussion. We believe it  
15   accurately represents the comments and the responsive  
16   comments subject to any comments by the other parties,  
17   but because many of those were in narrative form, we  
18   have done our best to incorporate those as best we  
19   could into a matrix which I believe serves as a useful  
20   guide for the Commission.

21          COMMISSIONER MARKS: The bench would find  
22   that document useful in keeping track of the issues.  
23   Is there any objection to putting that into the record  
24   in the case and having me refer to it?

25          MS. JOYCE: Your Honor, Stephanie Joyce

1 representing Securus Technologies and T-Netix.  
2 Securus does not object. It would note that it  
3 received this copy about 10 minutes ago and it is  
4 quite long a piece. Global did a lot of work on it.  
5 So we haven't been able to review it in full, so we  
6 would ask permission to not object, but subject to  
7 check because, in fact, Securus did make comments on  
8 each and every provision and I haven't been able to  
9 check on this reply set of consolidated comments,  
10 whether everything is fully accurate at this time.

11 COMMISSIONER MARKS: Thank you. Are there  
12 additional objections beyond Ms. Joyce's subject to  
13 check comments?

14 MS. CLIFFORD: I would join in that  
15 correction.

16 MR. HOLLORAN: Commissioner Marks, Staff  
17 would join as well. We haven't had a chance to look  
18 at the responsive comments, but as a working document  
19 it's quite helpful, I think.

20 COMMISSIONER MARKS: Okay. Bring three  
21 copies of that, one for the court reporter, one for  
22 myself and one for Ms. Margaret Caffey-Moquin. Thank  
23 you.

24 So this document is admitted into the  
25 record, subject to the condition that -- well, that we

1 won't take this as the gold standard of accuracy of  
2 each party's comments. If some party -- excuse me,  
3 interested person finds something that is seriously  
4 wrong with this and wants to apprise the Commission  
5 after the close of the record, that would be  
6 acceptable. But again, we're going to use this as an  
7 aid, not as the primary resource as to what everybody  
8 said. And so with that, we'll take that in the  
9 record.

10 (Exhibit 1 admitted.)

11 COMMISSIONER MARKS: As we discussed, I  
12 think I will use this as my road map for now.

13 I would like to go through the issues, and  
14 I'm not sure if we'll have a standard order of  
15 response, but the Commission's practice is that Staff  
16 gets clean-up, so they get to go last each round. And  
17 as I stated before we went on the record, if there's  
18 something that we don't cover that someone here today  
19 wants to be sure to apprise the Commission of on the  
20 record, I will give you that opportunity before we  
21 close the hearing.

22 MS. IVES: Commissioner?

23 COMMISSIONER MARKS: Yes?

24 MS. IVES: I think just as a preliminary  
25 matter -- Patricia Salazar. I represent local counsel

1 for Securus and T-Netix. I had filed a motion to have  
2 Ms. Joyce admitted pro hac vice, and that motion has  
3 not been ruled on. Just so there aren't any problems  
4 or issues, I would love to get that motion decided.

5 COMMISSIONER MARKS: Thank you, Ms. Ives.

6 Do you know -- I can't recall the State Bar  
7 rule. Do attorneys from out of state have to pay 50  
8 bucks to the State Bar to appear here?

9 MS. IVES: I don't believe that's the case.

10 COMMISSIONER MARKS: You don't think so.  
11 Okay. So Ms. Joyce complies with all the requirements  
12 for State Bar rules.

13 MS. IVES: To the best of my knowledge. I  
14 will point out she was admitted pro hac vice in two of  
15 the other cases, the 442 case and the 316 case.

16 COMMISSIONER MARKS: Thank you. Your motion  
17 is granted.

18 MS. IVES: Thank you.

19 COMMISSIONER MARKS: Okay. So the first  
20 item is -- that there was some dispute on who was a  
21 consumer. And I believe that it's Staff's position  
22 that it should include those who fund as well as  
23 initiate, which I assume would be the inmate and the  
24 received. Now, I -- now, as I understand the filed  
25 comment, there was objection receiving doesn't, and

1 maybe if I could have Staff come up. I know I said  
2 Staff would go last, but this is one where  
3 -- Mr. Holloran and Mr. Reynolds -- we have so few  
4 people.

5 (A discussion was held off the record.)

6 COMMISSIONER MARKS: Okay. Back on the  
7 record. Let's just get all the persons and  
8 appearances down right now. Probably should have done  
9 that to start.

10 Mr. Albright, you want to start?

11 MR. ALBRIGHT: Yes. My name is Jeff  
12 Albright. I'm with the law firm of Lewis and Roca,  
13 LLP, and I'm here representing Global Tel, Inc.

14 MS. IVES: Good Afternoon. Patricia Salazar  
15 Ives from Cuddy & McCarthy, LLP, representing -- local  
16 counsel for Securus Technologies and T-Netix.

17 MS. JOYCE: Stephanie Joyce from the law  
18 firm Arent Fox, LLP, also here for Securus  
19 Technologies, Inc. and T-Netix, Inc.

20 I would like to note that Curtis Hopfinger,  
21 who is the Director of Government and Regulatory  
22 Affairs for Securus Technologies is here.

23 MS. CLIFFORD: Carol Clifford on behalf of  
24 the New Mexico Criminal Defense Lawyers Association.  
25 And my client, the Executive Director for NMCDLA,

1 Cathy Ansheles has just come into the room.

2 MR. HOLLORAN: Timothy Holloran, Staff  
3 counsel, and also with me is Staff witness, John  
4 Reynolds. And Mr. Mike Ripperger, the  
5 Telecommunications Bureau Chief, is also present in  
6 the room.

7 COMMISSIONER MARKS: How about Mr. Baca? Is  
8 he with you?

9 MR. HOLLORAN: Yes. Mr. Arcy Baca on behalf  
10 of the Consumer Relations Division is also present. I  
11 wasn't aware that he was in the room.

12 COMMISSIONER MARKS: Okay. And then, we  
13 also have, Margaret Caffey-Moquin from the General  
14 Counsel's office, and that actually comprises everyone  
15 who is here in the hearing room.

16 Okay. Does anybody or are any of the  
17 entities appearing disputing that one who funds should  
18 be considered a consumer for purpose of this rule?

19 Ms. Joyce?

20 MS. JOYCE: Your Honor, the rule as written  
21 states that the definition of consumer does include  
22 one who solely funds a calling account for purposes of  
23 subparts 12, 13 and 14(F) of these proposed rules.  
24 What that means is that a person that does not even  
25 use the inmate calling services, one who neither



1 places nor accepts an inmate call, if they fund an  
2 account they are already protected by the complaint  
3 provisions that's in this rule, by the Commission's  
4 authority to enforce the rule, and by the prohibition  
5 in this rule prohibiting carriers from imposing any  
6 fee or charge that has not been approved and  
7 tariffed. And as such, those persons are in fact  
8 already protected by the proposed rule as written.

9           Securus has objected to making one who funds  
10 an account and only funds an account a consumer for  
11 all purposes under the proposed rule. It doesn't seem  
12 sensible that one who doesn't use the service needs to  
13 be protected by a service quality subpart of the rule,  
14 or an audible rate disclosure subpart of the rule  
15 because they haven't used the service.

16           Now, one who uses the service, one who  
17 initiates or receives, is definitely protected by all  
18 subparts of the proposed rule.

19           So one who only funds an account and does  
20 nothing else, we do not feel it's appropriate for the  
21 Commission to assert jurisdiction over those people  
22 for all purposes, but we did want to make sure in the  
23 rule that we crafted that someone who funds an account  
24 is protected under the complaints provision, the  
25 enforcement provision, and the prohibition against

1 off-tariff charges.

2 COMMISSIONER MARKS: So the things you don't  
3 want that person to have standing for were service  
4 quality and disclosures, but you mentioned they get  
5 disclosures of rates.

6 MS. JOYCE: I'm sorry?

7 COMMISSIONER MARKS: Didn't you say that  
8 they are entitled to disclosures of rates?

9 MS. JOYCE: If they are not using the phone,  
10 if they are not placing the call or accepting the  
11 call, they are not on the telephone call, it doesn't  
12 make sense to have an audible rate disclosure  
13 provision that applies to the telephone call to  
14 somebody who didn't hear the call. We think it be  
15 would a funny application of the Commission's  
16 jurisdiction. But the things that are in this rule  
17 that is going to affect somebody who funds an account,  
18 they will be protected.

19 MS. CLIFFORD: I would like to respond to  
20 that for NMCDLA. I think maybe an example would help  
21 clarify this issue. If a law firm is funding  
22 telecommunications services for clients who are  
23 incarcerated, I am not understanding why the law firm  
24 should not be entitled to disclosures of rates and  
25 other information other than those sections that

1 counsel describes. And we'll get into this later when  
2 we discuss the complaint procedures more. But in many  
3 instances it's going to be the law firm representing  
4 the incarcerated person who is in the best position to  
5 address issues with service quality and with rates,  
6 and the only way to make sure that appropriate  
7 disclosures are made and that such entities are  
8 treated on an equal footing with other consumers is to  
9 put them in the definition, otherwise I think we're  
10 creating ambiguities unknowingly, and carving out  
11 certain rights and excluding other protections by not  
12 making a comprehensive definition.

13 COMMISSIONER MARKS: Ms. Joyce, you know, in  
14 terms of the -- as I understand, when a call is  
15 initiated there is supposed to be some disclosure  
16 you're going to be charged so much per minute.

17 MS. JOYCE: Under this rule that would  
18 happen.

19 COMMISSIONER MARKS: It would seem to me  
20 that that would not apply to a funder just by becoming  
21 designated as a consumer, because that person is not  
22 on that phone call. So maybe -- maybe the disclosure  
23 rule might need a little more clarification, but I see  
24 that as kind of a common sense thing.

25 MS. JOYCE: May I respond very quickly?

1 COMMISSIONER MARKS: Yes.

2 MS. JOYCE: I appreciate Ms. Clifford's  
3 statement and her wish that criminal defense lawyers  
4 can assist their inmate clients in dealing with the  
5 phone system. I think what we're talking about is, we  
6 never preclude a criminal defense lawyer from coming  
7 in to the Commission asking questions on behalf of an  
8 inmate. But what we think would be strange would be  
9 to grant standing to the law firm itself who hadn't  
10 actually used the phone.

11 We're not precluding them from representing  
12 the inmate in assisting them, but when you are talking  
13 about an audible rate disclosure that the inmate would  
14 get and the called party would get, it would be  
15 strange to have the law firm be granted standing in  
16 its own right to bring a complaint, lawyer versus  
17 phone company, when the lawyer was not on the phone,  
18 in fact, the inmate was on the phone.

19 COMMISSIONER MARKS: Okay. Mr. Albright?

20 MR. ALBRIGHT: And our concern from GTL's  
21 position was more technical in nature, I believe, in  
22 the fact -- and this goes to service quality and some  
23 other provisions of the rule as well -- in that -- and  
24 Mr. Hopfinger may be able to shed some light on this.  
25 But the IOSF interface is with the wire line service,

1 so usually that connection is either at the jail  
2 interface where the IOSP equipment ends and then  
3 enters the land line service of the incumbent  
4 provider, the ILEC, or certainly within the last mile  
5 of telecommunications hookup to the jail and the  
6 facility. So a lot of those things with regard to  
7 service quality, with regard to the connectivity and  
8 all of those things really are not in the hands of the  
9 IOSP. They are really in the hands, many times, with  
10 regard to the ILEC.

11 So from the consumer point of view we  
12 thought the clarification might be needed to make sure  
13 the customer in that case is not the direct -- or the  
14 consumer, the person receiving the call, depending  
15 upon those certain quality issues, it's tied more to  
16 the land line than it is to the IOSP, who operates  
17 pretty much within the confines of the jail.

18 COMMISSIONER MARKS: I'm not -- does your  
19 comment relate to recipients or to funders? I don't  
20 think that's clear.

21 MR. ALBRIGHT: We didn't make a -- we said  
22 in our comments that it could apply to either.

23 COMMISSIONER MARKS: Okay.

24 MR. ALBRIGHT: That we didn't have an issue  
25 as to whether or not it applied to funders. And we

1 said an account order or who funds or initiates a  
2 telephone call, and so we didn't have any real issue  
3 with that.

4 COMMISSIONER MARKS: Okay. Let me -- I  
5 don't know if Staff wants to weigh in, but -- I have  
6 got a question or concern about the receives. I am  
7 -- is the -- should the individual who receives a  
8 phone call be considered a consumer for the purpose of  
9 this rule?

10 I mean, usually if I'm getting a phone call  
11 and it's a lousy connection or something I talk to my  
12 own phone company; right?

13 I see nodding but -- Staff?

14 MR. HOLLORAN: I think with regard to  
15 receiving a phone call, it sort of falls into the same  
16 sort of category of the funder, and that is that what  
17 Staff is concerned with is that the individual outside  
18 the facility has some ability to advocate on the part  
19 of the individual who is in the facility. That  
20 individual, for example, may be incompetent. And so  
21 I'm going back to the funding issue now. But in terms  
22 of one who funds, that individual may be the person  
23 that is speaking for the individual that's  
24 incarcerated and, in fact, may have to assert the  
25 rights that are contained within the rule. And it may

1 also be the recipient of the phone call as well, even  
2 if they haven't funded.

3 COMMISSIONER MARKS: If we granted full  
4 standing to the funder, would that diminish the need  
5 to have recipient in there?

6 MR. HOLLORAN: You mean, trade out recipient  
7 for funder?

8 COMMISSIONER MARKS: Yes.

9 MR. HOLLORAN: Mr. Hearing Examiner, I think  
10 the funder certainly is probably -- perhaps has better  
11 standing, I might put it that way. However, the  
12 parties have agreed that the recipient is also a --  
13 consumer is also defined to include recipient, and we  
14 have -- I believe we have a consensus on that.

15 COMMISSIONER MARKS: All right.

16 MS. CLIFFORD? May I address that as well?

17 COMMISSIONER MARKS: Sure.

18 MS. CLIFFORD: I think it's really important  
19 to include the recipient. Let me give you an  
20 example. If I'm a criminal defense lawyer and I have  
21 to make arrangements to talk to my client by having  
22 him or her call me on a collect call from an  
23 institution because I have limited ability to call  
24 into that institution, I am a recipient, but I also  
25 may be a funder. And if there's a problem with my

1 client getting calls out for some reason that has to  
2 do with service inside the facility, I may be the only  
3 one who could lodge a complaint and try to get to the  
4 bottom of it. And if I don't have standing to do  
5 that, then it really guts the enforcement provision of  
6 the rule.

7 And that's -- I would say there are a large  
8 number of attorney-client communications that occur in  
9 that fashion, prepaid or collect calls that are made  
10 to the attorney's office at an arranged time and are  
11 paid for by the law firm on behalf of the  
12 incarcerated.

13 So those two pieces, both funding and  
14 receiving, are inextricably intertwined, in my view,  
15 and that the ability for the recipient to lodge a  
16 complaint is absolutely critical to assuring that the  
17 service quality is maintained.

18 COMMISSIONER MARKS: Anybody else want to  
19 weigh in on -- probably need to move on. Ms. Joyce?

20 MS. JOYCE: Quickly, Your Honor. Because  
21 under the telecommunications rule, Securus thinks it's  
22 absolutely fair game that it protects the person who  
23 initiates and the person who receives, because they  
24 are using telecom service. They are reciprocal  
25 parties in that transaction and that's fair. Someone



1 who only funds, never takes a call and never places  
2 the call -- and this happens fairly frequently -- they  
3 will have protections under this rule, but it will be  
4 strange to apply telecommunications-specific rules,  
5 rules that govern the pathway between the inmate and  
6 the calling parties, to convey standing to a third  
7 party for that. I think it would be anomalous.

8 And again, the criminal defense lawyers, if  
9 they need to protect their inmates, can certainly  
10 lodge a complaint on behalf of the inmate or on behalf  
11 of the other calling party without running afoul of  
12 the typical standing constraints in the constitution  
13 and in the common practice.

14 COMMISSIONER MARKS: Thank you. Let's go on  
15 to the additional definitions and the multiple and  
16 toll calls. Let me ask folks about something that  
17 occurred to me. What if the rule read local call  
18 means a telephone call which originates on an  
19 institutional phone and terminates within the same  
20 local calling area as defined by the -- et cetera? So  
21 just strike the words land line, to a land line phone,  
22 as well as the proposed addition of wireless, so it  
23 would read again, terminates within the same local  
24 calling area, so we get away from trying to bring in  
25 land line, wireless VOIP, et cetera. Would there be

1 any objection to that?

2 MR. ALBRIGHT: GTL would certainly -- those  
3 were our proposed definitions. We would certainly be  
4 okay with that.

5 COMMISSIONER MARKS: Just striking that and  
6 then doing the same thing on toll call.

7 MS. JOYCE: May I make a suggestion?  
8 Instead of saying terminates to the land line phone, I  
9 agree that the language terminates to a land line  
10 phone is not helpful, but possibly language stating  
11 terminates to a telephone number within the local  
12 calling area, focusing on the number, doesn't matter  
13 how you got it, on what device.

14 COMMISSIONER MARKS: Okay. That's a good  
15 suggestion.

16 MR. ALBRIGHT: I do have one concern with  
17 respect to that if we limited only to telephone  
18 number, in many cases now instead of telephone numbers  
19 it will terminate to an IP address. We find that to  
20 be the case, I believe, with regard to some of the  
21 broadband initiatives around here.

22 MS. JOYCE: May I respond?

23 MR. ALBRIGHT: Go ahead.

24 MS. JOYCE: It may be an IP address on the  
25 computer device, but there is still a local, official

1 telephone number associated with it, so the switch  
2 would know it's a local call. There is always going  
3 to be a local number dialed. It might get auto  
4 forwarded via Skype, but I think telephone number  
5 would still work in that event.

6 MR. ALBRIGHT: All right.

7 COMMISSIONER MARKS: Okay. Let's put off  
8 rates to the end. So we'll come back to the --

9 Okay. I think the next one would be the  
10 concept of the application for registration?

11 Ms. Clifford, that was where I think you wanted to see  
12 some additional requirement. Do you have anything you  
13 want to add to your written comments or --

14 MS. CLIFFORD: I do. Thank you.

15 One of the parties, I think it was Securus,  
16 pointed out that there was some redundancy in what we  
17 were suggesting in subparagraphs H and I on the second  
18 page of the comment, and I would agree with that.

19 That was an oversight on our part. So we're  
20 withdrawing what was originally identified as comments  
21 H and I on page 5 of our attachment.

22 And let me just address the concern behind  
23 the other additions that are listed as K on page 4, M,  
24 F and G, and there was a problem with my lettering.  
25 It should have been L, M, N on page 5. But the

1 concern behind it was simply that if this rule is  
2 intended to take the place of some other certification  
3 requirement, and that the carriers providing the  
4 service are not being required to obtain either an IXC  
5 or a CLEC certification in order to provide the  
6 service, that the Commission should consider the same  
7 kind of information that it routinely considers in  
8 other types of carrier applications.

9 And so we derived these, and you can see my  
10 citations in brackets at the end of each paragraph.  
11 Those are citations to the Commission's rules for IXCs  
12 and CLECs. So there is authority cited there for the  
13 principle behind this, which is that there has to be  
14 some vetting by the Commission if this is going to  
15 -- this process will take the place of any other  
16 certification, and that's really what is driving the  
17 concern.

18 COMMISSIONER MARKS: All right. Couldn't  
19 that pose a problem that if the correctional facility  
20 contracts with this vendor, and the vendor met their  
21 requirements, then they come to the Commission for  
22 certification, we say, oh, gee, you are not qualified  
23 to do this work. Do you see a conflict there?

24 MS. CLIFFORD: I was assuming that the  
25 certifications would be obtained before they would bid

1 and that that process would be resolved prior to any  
2 bid being submitted.

3 COMMISSIONER MARKS: Does the rule kind of  
4 call for that?

5 MS. CLIFFORD: I'm not sure, Your Honor. I  
6 was -- I didn't participate in the drafting of the  
7 proposed rule so I'm not sure what it contemplates in  
8 that regard. I'm not sure it's clear.

9 COMMISSIONER MARKS: And Ms. Joyce, your  
10 clients had no objection to those or --

11 MS. JOYCE: Well, the clarification that the  
12 criminal defense lawyers made in their reply comments  
13 were helpful in that they recognized that the  
14 enumeration got wonky. But one thing I do want to  
15 state is that when this proposed rule was drafted it  
16 was expressly harkening to existing rules for  
17 certifications, Rule 10 for pay phones, 12 for other  
18 telecom resellers, and then telecom nonresellers, and  
19 LECs. So we looked at all of those and we really, to  
20 be honest, cut and pasted it to make sure it was  
21 really consistent. What we have here are subparts A  
22 through J, and they cover quite a lot of materials.

23 Securus noted in its reply comments that the  
24 additions that the association has proposed are  
25 redundant or are very closely analogous to one of the

1 existing subparts, but in different words, so it  
2 becomes confusing. So what Securus came out with is  
3 that in large part these aren't needed, but that if  
4 the Commission did adopt them, specifically the  
5 proposed new subpart L, that there's confidentiality  
6 concerns that go with that. This subpart L would  
7 require the applicant to state in very specific terms  
8 exactly the facilities and the equipment that is going  
9 to be used, and that can get into some proprietary,  
10 very sensitive information. Because as the Commission  
11 is aware, these services are provided pursuant to  
12 contracts that are very fiercely competed.

13 So Securus did ask that there be a  
14 confidentiality provision added here if this new  
15 application requirement were adopted. But in large  
16 part we -- Securus feels, after research believes that  
17 what is in the existing rule is sufficient and is in  
18 keeping with what the Commission has done for decades.

19 COMMISSIONER MARKS: Is there anything else  
20 anyone wants to add to what's been filed in the  
21 response comments?

22 Okay. Mr. Albright?

23 MR. ALBRIGHT: I think, as you will see from  
24 GTL's perspective, the issue of facilities-based or  
25 nonfacilities-based are not really relevant in the

1 context of the service that the IOSP provides. I  
2 think it goes along with what Ms. Joyce was saying  
3 there. And again, this is -- this is limited to  
4 equipment that's inside the facility and interfaces  
5 sometimes with prison equipment, interfaces with the,  
6 perhaps, the monitoring equipment which is sometimes  
7 provided with the IOSP, sometimes, for example, with  
8 an ICE facility it may be separate equipment that the  
9 Federal Government has, but they aren't -- they aren't  
10 carriers in the traditional sense of what a carrier  
11 provides under telecom service. I mean, they aren't a  
12 long-distance service provider and so forth. They  
13 interface with the -- with the other incumbent  
14 carriers with the land lines, and the equipment is  
15 limited to the interface at the -- at the jail  
16 facility.

17 So I'm thinking in terms of the CLEC or in  
18 terms of being an ILEC, the IOSP really falls into a  
19 separate category. And they aren't carriers in the  
20 traditional sense.

21 COMMISSIONER MARKS: Okay. Folks ready to  
22 move on to disclosure of rates, fees and charges?

23 I did notice there was some disagreement  
24 about disclosing increases or decreases in taxes or  
25 other government-related fees, and I would be curious

1 why increases or decreases are part of that since the  
2 disclosure requirement is every time this call  
3 connected there would be a disclosure of current  
4 fees. Correct, Mr. Albright?

5 MR. ALBRIGHT: There was some -- there was  
6 some discussion about that, and we had extensive  
7 discussions during the hearing about that, too. We  
8 actually heard from some -- in some of the public  
9 comment meetings we had where all of that is initially  
10 disclosed to the people, but many people expressed  
11 frustration, I think is a minimum, that every time  
12 they get this big, long litany of what the fees and  
13 the rates and charges were, and we had testimony to  
14 the effect that -- that people would just as soon not  
15 have to listen to all of that since they have listened  
16 to it half a dozen times before. They get it on every  
17 call.

18 So the initial disclosure was considered to  
19 be appropriate. With regard to -- we took exception  
20 with the increase or decrease in the taxes and those  
21 things, because they will vary sometimes facility to  
22 facility, depending upon, for example, what New Mexico  
23 Gross Receipts Tax happens to be that week, or that  
24 month, or whether you are in Bernalillo County or  
25 whether you are in the City of Albuquerque or whether



1 you are down in Las Cruces or some other area.

2 SRUSF funds change, that rate goes up and  
3 down. And we have other rules in effect where those  
4 disclosures -- and I believe it's under either the ETC  
5 disclosure rules or the SRUSF rules -- Mr. Ripperger  
6 could probably testify to that -- where we  
7 specifically excluded the need to reference those  
8 increase or decrease in government fees and charges  
9 each time they change.

10 So that becomes cumbersome from a tariff  
11 submission point of view, and it's difficult to keep  
12 up with, particularly if someone is moved from one  
13 facility to another facility, to make sure they have  
14 the recent, for example, New Mexico Gross Receipts Tax  
15 charged at that facility.

16 COMMISSIONER MARKS: I have got a few  
17 questions before I go to someone else, so --

18 It doesn't -- I was getting the impression  
19 that there is a requirement that there would be an  
20 audible message at the start of at least some phone  
21 calls saying you are going to be charged X dollars a  
22 call, plus X per minute; is that correct?

23 MR. ALBRIGHT: Yes. Yes.

24 COMMISSIONER MARKS: And is that embedded in  
25 the federal regulations? Is that why it doesn't

1 appear explicitly in these regs?

2 MR. ALBRIGHT: I don't know the answer to  
3 that question.

4 COMMISSIONER MARKS: Ms. Joyce, do you know  
5 the answer to that question?

6 MS. JOYCE: I do. What this rule does for  
7 New Mexico is import the FCC rule for pay phones. And  
8 it says that the inmates' telephone provider, or to  
9 use the term in this case, the IOSP, must disclose  
10 before giving the prompt to accept or decline the  
11 call, all fees and charges that the telephone company  
12 is going to impose for the call. So permitted costs  
13 are charged, if that applies per call, charge if that  
14 applies. This rule does not contemplate audible  
15 disclosure of government taxes. That's why it becomes  
16 anomalous to talk about changing disclosure to reflect  
17 increases or decreases.

18 Securus's position is simply that government  
19 taxes are completely out of its control, and to put a  
20 burden of disclosing government fees onto the  
21 telephone company didn't make sense. But what Securus  
22 is ready to do is what it does federally for  
23 interstate rates, and in some states on an intrastate  
24 basis, is to give an audible disclosure, you will pay  
25 X for the first minute, Y for the minutes thereafter.

1 If you choose to accept, press 1 or press 2 or  
2 whatever the prompt would be. That would mirror  
3 exactly the federal rule that has been in place since  
4 2001.

5 COMMISSIONER MARKS: Okay.

6 MS. CLIFFORD: I have a comment, if I may?

7 COMMISSIONER MARKS: Just one more question.

8 And if the inmate's paying with a prepaid  
9 account, this is not a collect call, the inmate would  
10 get that audible disclosure on every call where they  
11 have an ability to press 1 to skip past it, if they  
12 know what they are paying?

13 MS. JOYCE: That was not built into this  
14 rule. I think it erred on the side of more  
15 disclosure. Staff particularly was very intent on  
16 ensuring that rates are disclosed in the tariffs, that  
17 they were disclosed in placards or some other posted  
18 signage in the facility, and that they were audibly  
19 disclosed. We didn't contemplate a bypass feature,  
20 but we did want to make sure the audible disclosures  
21 would be there.

22 COMMISSIONER MARKS: Is bypass technically  
23 feasible?

24 MS. JOYCE: Yes, technically.

25 COMMISSIONER MARKS: Is it difficult or

1 expensive to do?

2 MS. JOYCE: Mr. Hopfinger is the Director of  
3 Regulatory and Government Affairs.

4 MR. HOPFINGER: I guess I need to first  
5 understand what you mean by bypass. What we do is,  
6 our system, and I believe other IOSP systems work the  
7 same, is we give the option of receiving a rate  
8 quote. In other words, you have the option when you  
9 get a call, it will say, you are receiving the call  
10 from X jail and such inmate. Do you wish to receive a  
11 rate quote. The inmates also, if they are using a  
12 debit account or a calling card, also have the option  
13 of receiving information on what the cost of the call  
14 is.

15 So, say they are bypassing, I guess, the  
16 called party, yes, can bypass. They just don't  
17 request the rate quote.

18 COMMISSIONER MARKS: Mr. Hopfinger, it  
19 sounds to me like we are talking the difference  
20 between an opt-in or opt-out type of system as you  
21 might see in other contexts. But this rule as  
22 proposed I think would not support an opt-in. It says  
23 must disclose. You don't -- it doesn't say you must  
24 offer a disclosure. So you would have to give -- in  
25 New Mexico if we do this rule as it looks now, you

1 would have to give everybody the message.

2 So my question, could you -- you know, could  
3 there be a way to bypass it, press 1 to skip?

4 Although it sounds like --

5 MR. HOPFINGER: The answer, Commissioner, is  
6 anything is technically feasible with enough  
7 programming, and I can't stand here today and state  
8 what that programming would be in order to offer a,  
9 here is the -- coming forward is the rate, if you wish  
10 to bypass it, press 1.

11 COMMISSIONER MARKS: On the other hand,  
12 saying your call will cost \$3 plus a dollar a minute,  
13 takes about as much time to say as, to skip this press  
14 1, doesn't it?

15 MR. HOPFINGER: That's correct, sir.

16 COMMISSIONER MARKS: Okay.

17 MR. HOPFINGER: And I will say that we have  
18 had facilities that have requested, as opposed to just  
19 offering the rate quote, have requested that there  
20 would be a rate quote provided on every call, and  
21 normally shortly after or a few months into that they  
22 come and ask us to change it to the option because  
23 people receiving the call say, I want to get around  
24 that.

25 COMMISSIONER MARKS: Okay. Okay.

1 Ms. Clifford?

2 MS. CLIFFORD: Thank you. I think there's a  
3 real problem with these two sections, A and B. I am  
4 becoming more concerned as I listen to the  
5 discussion. It seems that we are talking about two  
6 different types of disclosure. One is automated and  
7 one is posted. But I don't think the rule is clear  
8 whether there's any requirement for disclosure in  
9 either scenario of government rates, government fees  
10 and taxes, and I think it's absolutely crucial that it  
11 be done somehow. If it's not done through the  
12 automated system it has to be done through the  
13 posting, or the consumer has no protection at all.  
14 They would have no way of knowing whether they are  
15 being charged appropriate amounts per the government  
16 surcharges.

17 COMMISSIONER MARKS: Well, I -- they would  
18 have no way of knowing up front. They will see their  
19 bill. They will know if they are charged the wrong  
20 amount for the Gross Receipts Tax when they get their  
21 bill.

22 MS. CLIFFORD: But my understanding with the  
23 prepaid cards is they don't receive a bill that breaks  
24 it out that way, and the others participating here can  
25 clarify.

1 I have one really critical concern, which  
2 is, that I don't think the federal regulations that  
3 are cited in the rule which have to do with disclosure  
4 of correctional facility surcharges is met if the only  
5 information that the consumer is given is a rate  
6 that's a lump sum of all of the government surcharges  
7 and correctional facility charges in one figure. So  
8 those are my concerns. I think there needs to be  
9 greater clarity about where, in what manner is the  
10 disclosure of government surcharges made, and is it a  
11 requirement of this rule.

12 COMMISSIONER MARKS: Okay. What are the  
13 government -- what government surcharges show up on  
14 these kinds of calls?

15 Ms. Joyce?

16 MS. JOYCE: I believe you have a state  
17 universal service contribution requirement that is  
18 assessed on calls. That's something that is set by an  
19 entity that is a telephone company. I know that.

20 And any excise taxes if they apply in this  
21 state.

22 COMMISSIONER MARKS: Okay. Is that a  
23 federal excise tax still on the phone?

24 MS. JOYCE: There used to be.

25 COMMISSIONER MARKS: It's gone now.

1 MS. JOYCE: It's gone now.

2 COMMISSIONER MARKS: So state USF, state  
3 sales tax, which is called Gross Receipts Tax here;  
4 right.

5 Do they get charged E-911 surcharges?

6 MR. HOPFINGER: The answer is yes, if they  
7 are appropriately applied on -- then we're talking  
8 about collect calls now. It applies a little bit  
9 differently when you are talking calling cards that  
10 the inmate uses. But on collect calls any appropriate  
11 taxes that would apply to their local telephone bill  
12 is the easiest way to say it, would also apply to  
13 these calls. So if it is appropriate -- and again, as  
14 was stated, this may vary slightly from area to  
15 area -- whatever the appropriate taxes are in that  
16 area would be applied to the collect calls.

17 COMMISSIONER MARKS: So --

18 MR. ALBRIGHT: And Commissioner Marks, in  
19 some cases, too, the bill that the person gets, they  
20 will actually get billed by their local exchange  
21 carrier, by the LEC, and not directly by the IOSF, in  
22 which case those things do show up on a bill. But as  
23 far as, you know, disclosure before, and the SRUSF  
24 rule doesn't include those. In fact, there's explicit  
25 language that says that those need not be disclosed up



1 front.

2 COMMISSIONER MARKS: So Ms. Clifford, of  
3 these fees, gross receipts taxes, what, 7, 8 percent  
4 or something, our USF is 3 percent, the other ones are  
5 not material, so we're talking about 10 percent or so  
6 government fees on top, do you think -- can you  
7 convince me that the benefit of somehow disclosing  
8 these fees, which are ordinary to all phone  
9 transactions, is commensurate with the cost to the  
10 companies to do this as well as to the inmate, who has  
11 got to listen to all of this, as opposed to, you know,  
12 ordinary -- aren't we trying to protect the inmates  
13 and their families list and others from special,  
14 unreasonable, gotcha charges and things like that? I  
15 mean, I didn't think the point of this rule was to  
16 really address sales tax.

17 MS. CLIFFORD: And Commissioner Marks, that  
18 really wasn't the driver of the concern. The driver  
19 of the concern was the federal regulation that  
20 requires that fees imposed by correctional facilities  
21 on the use of the telecommunication system be fully  
22 disclosed. That's where you have a potential for  
23 gotcha charges.

24 COMMISSIONER MARKS: So you are saying that  
25 these would be governmental fees, not in the normal

1 sense, but because the jail or the prison is a  
2 government entity, and if they choose to put a  
3 surcharge on it.

4 MS. CLIFFORD: Right. I think that's the  
5 most risky part of this category of charges. And I'm  
6 not wedded to the idea that there has to be -- there  
7 has to be an automated disclosure of these. I  
8 understood that the second part under B was a posted  
9 disclosure. And I think if the posted disclosure  
10 could include these, and that it's prominent and it's  
11 disclosed at the time that someone purchases a prepaid  
12 card, then that probably suffices because the consumer  
13 then is aware before they initiate calls that they are  
14 going to get hit with these charges.

15 COMMISSIONER MARKS: Don't we -- okay.  
16 Doesn't the rule address this somewhere else where it  
17 talks about only -- and -- only Commission-approved  
18 fees and surcharges may be collected? Is the  
19 Commission going to be approving these fees and  
20 surcharges from the correctional facilities?

21 MS. CLIFFORD: No, Your Honor, I don't think  
22 that the Commission does.

23 COMMISSIONER MARKS: But you think there's a  
24 possibility that those could occur?

25 MS. CLIFFORD: Absolutely.

1           COMMISSIONER MARKS: Okay. So that's  
2 -- so -- thank you, anyway. So that's the danger here  
3 we need to ensure that if there are what I call  
4 atypical fees, something other than the ordinary fees,  
5 that -- government fees that are attached to a  
6 telephone call, it does get disclosed? I think that  
7 tells us what we need to know.

8           MR. ALBRIGHT: Commissioner Marks, I would  
9 just add, I think that could be -- could be handled by  
10 some additional language, just to make -- just for  
11 that clarity, additional fees and charges that might  
12 be imposed at a correctional facility or by the IOSF,  
13 again, excluding of the government taxes and so forth,  
14 would be disclosed and we would certainly have no  
15 objection to that. And, you know, the mechanics for  
16 that we could figure out. With some adjustment in the  
17 language I think that could be added. And it  
18 certainly has to be reflected in the tariff anyway,  
19 that the IOSF has now, if the --

20           COMMISSIONER MARKS: Well, I'm not sure that  
21 that's completely clear, that it would have to be in  
22 the tariffs, but I agree that what we need there is to  
23 make it clear that our disclosure rules encompasses  
24 unusual fees that are being imposed by the facility  
25 and should not burden the IOSF with disclosing the

1 current rates of Gross Receipts Tax and state  
2 universal service and federal universal service and  
3 things like that.

4 Anything else on disclosure?

5 MS. CLIFFORD: One minor point,  
6 Commissioner. We, NMCDLA, would ask that the  
7 telephone number of the Commission Consumer line be  
8 disclosed in addition to the Consumer Division mailing  
9 address, which I think is the standard practice for  
10 disclosures of the Commission's Consumer Department,  
11 and we don't think there's any reason why this should  
12 be an exception.

13 COMMISSIONER MARKS: Ms. Joyce?

14 MS. JOYCE: Would that be audibly disclosed  
15 on each and every call or disclosed in signage,  
16 because the rule does provide that signage would be on  
17 or near the institutional phone setting forth contact  
18 information for consumer complaints as well as the  
19 mailing address.

20 COMMISSIONER MARKS: Well, I will recommend  
21 to general counsel and my colleagues that those things  
22 go on signage. I think we have got some trade offs  
23 here. I don't think we want to burden inmates and  
24 their families of having to listen to this stuff  
25 repeated all the time. I mean, one of the concerns

1 that brings us here is that -- and hopefully it's  
2 better now than it was two years ago -- but these  
3 calls get dropped and they are reconnecting them and  
4 they might have to reconnect five times to talk to  
5 their family members. They don't need to listen to  
6 these automated messages five times that are lengthy.

7 So, you know, I don't really know much about  
8 correctional facilities' practices, but I understand  
9 that inmates don't have unlimited time to stay at the  
10 telephones listening to stuff, so I think I would  
11 recommend that you make it very clear and include all  
12 the information in the signage, and certainly provide  
13 a way to accept telephone complaints as well as  
14 written complaints from these people.

15 That would take me, on following  
16 Mr. Albright's matrix, to page 13 with complaints, I  
17 think.

18 In here I think one of the issues was filing  
19 fees. Now we're starting to talk about formal  
20 complaints. I understand, Ms. Clifford, that is what  
21 you were getting at; is that correct?

22 MS. CLIFFORD: Yes, Your Honor.

23 COMMISSIONER MARKS: Okay. We also -- the  
24 vast majority of our complaints are actually informal  
25 complaints. Are you aware of that?

1 MS. CLIFFORD: I was going to make that  
2 clarification --

3 COMMISSIONER MARKS: Okay.

4 MS. CLIFFORD: -- in my comments.

5 COMMISSIONER MARKS: I would just say to  
6 save the discussion, the filing fee for a formal  
7 complaint is statutory. We do have the ability to  
8 refund it, but we could not waive the rule, so just  
9 scratch that one off.

10 Then the question becomes -- I think you had  
11 asked for other accommodations.

12 MS. CLIFFORD: Would you like me to  
13 summarize those?

14 COMMISSIONER MARKS: I think they are pretty  
15 clear. You know -- there are accommodations to the  
16 situation if someone who is incarcerated. It's -- and  
17 I would imagine that in most of these cases that the  
18 Commission on a case-by-case basis would wind up  
19 granting all these things. Is there -- is there --  
20 but potentially there's a need for guidance.

21 MS. CLIFFORD: Commissioner Marks, I think  
22 there really is, because if the issue is addressed to  
23 the Hearing Examiner's or the Consumer Division first,  
24 I think it would be important for the Commission to  
25 direct that these measures be -- be taken in the case

1 of an inmate complaint, so that everyone's clear that  
2 the procedures -- that this relaxed, if you will,  
3 relaxed set of procedures can apply, and that it  
4 wouldn't have to be re-examined every time there was a  
5 complaint filed by an inmate.

6 I also think it's consistent with the  
7 Commission's own complaint rule which states  
8 explicitly that the complaint procedures should be  
9 liberally construed in the case of a pro se  
10 complainant.

11 COMMISSIONER MARKS: Okay. Well, I think --  
12 well, I can certainly understand why we would want to  
13 be able to take in informal complaints telephonically  
14 without any written correspondence required. I think  
15 it gets difficult to do a formal complaint. In fact,  
16 being as we can't waive the filing fee, there's going  
17 to have to be a writing, Ms. Clifford, so I would  
18 think that -- you know, we would construe the writing  
19 liberally. We wouldn't expect them to plead like an  
20 attorney. But I don't -- I don't see it -- it as  
21 practical to have an oral complaint initiate a formal  
22 case. You are welcome to respond to that.

23 I think we might be better off doing  
24 something along, you know, indicating at least in the  
25 rule that telephonic appearances will be permitted,

1 and the liberal construction.

2 And then --

3 MR. ALBRIGHT: Commissioner Marks, we took  
4 some exception to that with regards to the telephonic  
5 appearance. And again, we -- I think the Commission's  
6 complaint rules are broad enough and flexible enough  
7 where some of that could be granted. I mean, if the  
8 person who files the formal complaint is incarcerated,  
9 that sets up a whole different set of issues where  
10 they would have to be on a telephone presumably  
11 from -- if they are represented by counsel that may be  
12 different. If they are incarcerated in jail and try  
13 to appear electronically, it stretches my imagination  
14 that they might be allowed to stay on the telephone  
15 for a couple of hours to appear telephonically before  
16 this Commission on a hearing on a formal complaint.

17 I think there's enough latitude within the  
18 Commission's complaint rules to allow appearances pro  
19 se, allowing them to appear telephonically. I am not  
20 sure how we would verify that it is the complainant  
21 who is on the other end of the telephone from a due  
22 process point of view and subject to cross-examination  
23 everything else by the defendant in the case, which I  
24 assume would be the IOSF, would become potentially  
25 problematic.



1 COMMISSIONER MARKS: Does anybody expect  
2 that there will be more than -- that these will be  
3 frequent? I'm thinking we might see one of these  
4 every two years. Is there any disagreement?

5 Seeing none --

6 So we're talking about a --

7 MR. ALBRIGHT: No.

8 COMMISSIONER MARKS: What would folks think,  
9 then -- I'm whittling down Ms. Clifford's position,  
10 but I don't think this is a really -- I think this  
11 will be handled on a case-by-case basis ultimately  
12 because there won't be that many cases. But what if  
13 we put in there the rules governing the last part  
14 there, the Commission's rules governing the complaint  
15 will be liberally construed to permit complaints, and  
16 I insert there, made by incarcerated persons against  
17 IOSPs to be filed, processed and heard by the  
18 Commission. Just that general advisory?

19 Ms. Clifford?

20 MS. CLIFFORD: I think that's okay. Thank  
21 you.

22 COMMISSIONER MARKS: Okay. Then there's  
23 rates -- rates --

24 Okay. I want to go to the free call here.

25 It looks like that starts on page 22 of

1 Mr. Albright's document.

2 Mr. Reynolds, you are advocating for one  
3 free call; correct? To friends and family?

4 MR. REYNOLDS: One free call from one  
5 institution.

6 COMMISSIONER MARKS: Okay. How -- you used  
7 the word to a friend or family. How would you propose  
8 that the IOSP determines whether the person is calling  
9 on a family member or a friend or just a mere  
10 acquaintance or business associate or -- state  
11 official? I mean --

12 MR. REYNOLDS: Family or friend is used in  
13 my mind generically to describe pretty much all of the  
14 above. So the initial call that the inmate chooses to  
15 make to whomever outside the -- outside the walls of  
16 the institution, this is to address, you know,  
17 disclosure issue that -- that relates to the initial  
18 contact. In other words, how does one make contact  
19 with somebody within the institution or -- or from the  
20 institution outside the institution? It's very  
21 difficult to find out the mechanics and the rates and  
22 so forth, and this was an attempt to facilitate the  
23 initial contact, and that was the purpose of the free  
24 call.

25 COMMISSIONER MARKS: So this was not for the

1 person -- this was not the call that criminal defense  
2 lawyers discuss where the accused is able to contact  
3 people on the outside, say, hey, I have been  
4 arrested. This is more, hey, I've been incarcerated  
5 here and this is how you can reach me by phone, or  
6 this is what you need to do so that I can make phone  
7 calls to you?

8 MR. REYNOLDS: Yes. It's the general first  
9 attempt at communication after somebody has been  
10 incarcerated and it's not a -- it's -- conceptually  
11 it's something -- it's not unprecedented. Global Tel,  
12 Inc. has mentioned to me in our meetings that they  
13 have a chat feature where an inmate can call somebody  
14 and is given a limited amount of time to converse  
15 freely, could be a minute, I don't know exactly the  
16 details, but then at the end of that minute an  
17 operator intervenes and says, okay, you have had a  
18 chance to talk. Now from this point on I need some  
19 payment, and these are the reasonable terms and  
20 conditions for this to continue.

21 COMMISSIONER MARKS: So first of all, if we  
22 were going to go down this direction, you would be  
23 okay with us striking the words "friends and family,"  
24 and just say a five-minute call or two-minute call,  
25 whatever it is?

1 MR. REYNOLDS: Yes.

2 COMMISSIONER MARKS: I think the other  
3 commenters make the point that we don't want to get  
4 into the business of having them figure out who the  
5 person is calling.

6 MR. HOLLORAN: Mr. Hearing Examiner, I think  
7 that Staff would prefer that it be any person. I know  
8 it's a matter of controversy, but --

9 COMMISSIONER MARKS: And then they have also  
10 raised the objection that it's burdensome for them to  
11 figure out whether it's an initial call, a first call  
12 by an inmate. Do you know of an easy way for them to  
13 figure out -- figure that out?

14 MR. REYNOLDS: Well, they keep track of  
15 calls and called numbers and they record the calls.  
16 There's extensive data about calling activity, first  
17 of all, so that -- and the time of the call, duration  
18 of the call, so I don't think it would be too hard to  
19 make that determination.

20 COMMISSIONER MARKS: And they know which  
21 inmate is initiating the call?

22 MR. REYNOLDS: I believe they do, because  
23 inmates are assigned a -- a PIN or some form of  
24 identification so that the inmate initiating the call  
25 is identified in their system, it's inmate John Doe is

1 initiating a call and --

2 COMMISSIONER MARKS: Is that regardless of  
3 whether they are using -- making a collect call or  
4 using a prepaid card or whatever, there's an inmate  
5 number that gets registered with every call and it's  
6 always the same inmate number regardless of the  
7 payment method?

8 MR. REYNOLDS: That's my belief. I think  
9 Mr. Hopfinger can speak to that with more expertise  
10 than me, but given that all calls are recorded and the  
11 point of recording the calls is partly to investigate  
12 criminal activity, they need to know who is calling  
13 who, and I'm quite sure they know who initiates the  
14 call. They may not know exactly who is at the other  
15 end, but I believe they know.

16 COMMISSIONER MARKS: Okay. Mr. Hopfinger,  
17 is that correct? Do you know, does your system have  
18 to track the identity of the inmate making these  
19 calls?

20 MR. HOPFINGER: Commissioner Marks, it all  
21 depends. Most county facilities do not use what they  
22 call PIN numbers with inmates because they are there  
23 for a short period of time. So when the inmate picks  
24 up the phone and dials the phone call we don't know  
25 who the individual inmate is, yes. Those calls are

1 recorded. Those recordings are the property of the  
2 facility, not the telephone company.

3 For long-term Department of Correction type  
4 facilities, normally they do assign a PIN number to  
5 those individuals and we would know. Again, the  
6 problem becomes, inmates move, especially in  
7 Department of Correctional facilities, move from  
8 facility to facility and they may be assigned a  
9 different PIN number at the other facility, so we  
10 wouldn't know which is their first call.

11 The other thing would be is we wouldn't,  
12 even if we were able to do this, we wouldn't be able  
13 to know this until after the fact, sometime later when  
14 we went through and investigated all the database, to  
15 determine the calls.

16 COMMISSIONER MARKS: That's not how your  
17 system works? Your system doesn't --

18 MR. HOPFINGER: Yes.

19 COMMISSIONER MARKS: -- go look up the main  
20 inmate on real-time?

21 You got months to figure out, they got money  
22 to pay for it; right?

23 MR. HOPFINGER: If they have a PIN system as  
24 in a long-term facility, yes, it does look real-time  
25 to see if they are calling a number that they are

1 allowed to call, and it does look at those types of  
2 things. But at a facility that does not use inmate  
3 PIN numbers, again, most of the county jails because  
4 of short-term does not, all we will know is that the  
5 call went to a specific telephone number. We may not  
6 be able to identify the specific inmate.

7 MR. ALBRIGHT: And Commissioner Marks, and  
8 correct me if I'm wrong, but in those situations where  
9 PINs are given, for example, the inmate will be  
10 authorized, for example, a certain number of telephone  
11 numbers that they can call. And there are some that  
12 they may be precluded from calling.

13 So, for example, you might have eight  
14 numbers that you can call. One of those might be  
15 their attorney, and that particular number is coded in  
16 with the PIN so that when that call is made to the  
17 attorney, at least for GTL, that number is not  
18 recorded, was blocked out and is not automatically  
19 recorded. So that's how they handle those types of  
20 things.

21 Again, I'm not real familiar with the county  
22 system, but I know when they are assigned a PIN, for  
23 example, I would get eight numbers that could be used,  
24 so the facility checks, verifies it's not a drug user  
25 or not a woman who has been abused by the person

1 that's incarcerated. There are certain sets of  
2 those. You don't want them harassing somebody. There  
3 could be a protective order out there barring somebody  
4 from calling certain numbers. So out of those, like,  
5 eight numbers that the inmate can call, it will  
6 record, but if one of those is counsel, then that  
7 number is automatically blocked by the system because  
8 it's flagged as being to their counsel of record.

9 So -- and I don't know about the county  
10 facilities, how it works.

11 MR. HOPFINGER: You are absolutely correct.  
12 The databases -- we have databases for attorney  
13 numbers that have been authorized by the facility as  
14 attorney numbers, whether they are county or long-term  
15 facilities, and if that number is dialed the system  
16 automatically does not record that call. Any private  
17 call which could be attorney, medical help, clergy,  
18 anything that the facility has marked as a private  
19 telephone number the system will not record.

20 MR. REYNOLDS: I can tell you that I have  
21 witnessed personally at Santa Fe County the monitoring  
22 of inmate telephone calls and the computer screen  
23 shows, has an identification of the inmate -- I don't  
24 remember if it was a name or inmate number of the  
25 call, and the phone number being called, the time the



1 call started, and the database has a history of  
2 archived telephone calls. We have very precise  
3 information, so it may well be that some of the county  
4 facilities who have an overnight inmate, you know,  
5 maybe the information hasn't been entered in the  
6 system yet at that point. But at some point fairly  
7 soon in the inmate stay in the facility the inmate is  
8 identified. It's got to be identified into the  
9 telephone system so that authorized phone numbers can  
10 be listed, and so that the inmate can make calls.

11 MR. ALBRIGHT: But what -- the system you  
12 are talking about, though, is the inmate's -- is the  
13 institutional, correctional facility's information.  
14 That's not information that's provided to the IOSP.

15 MR. REYNOLDS: But it's a system that's  
16 installed by the IOSP, and that's part -- it's their  
17 system, and that's the system that's in the RFP when  
18 the county asks for bids on systems. The system is  
19 not just a dumb phone system. It's a secure system  
20 for inmates to use that is monitored by the facility,  
21 and the IOSP provides the computer systems, the  
22 screens and all that. So the data may belong to the  
23 institution, but the fact of the matter is, somebody  
24 pays for the phone call. That's a commercial  
25 transaction between whoever pays and the IOSP. So the

1 IOSP is -- presumably is keeping track of that.

2 MR. ALBRIGHT: But John, I would just, you  
3 know -- again back to some of the discussions we had  
4 earlier, in that -- in that it is that the IOSP, and  
5 now we're getting into an issue as to whether or not  
6 the PRC can exert that jurisdiction over the IOSP when  
7 the IOSP has no control over the requirements of the  
8 correctional institution with regard to the specs of  
9 the contract between the IOSP. I mean, it's a fine  
10 dividing line, but I think the dividing line is still  
11 one that's there.

12 COMMISSIONER MARKS: Ms. Joyce?

13 MS. JOYCE: Thank you. Focusing on the  
14 first call being five minutes, and focusing on Staff's  
15 concern that a newly incarcerated person would not be  
16 intimately familiar with how the phone works and they  
17 needed to get going, they needed to set things up, I  
18 believe that that concern of Staff has already been  
19 addressed in the way that the intake procedure goes  
20 for an inmate, just to provide some context, they are  
21 provided information about the phone. It works like  
22 this.

23 If it's a facility that allows debit  
24 accounts for the inmate or they can set up an account,  
25 if it's a place that has a commissary where they can

1 sell debit cards, they will say, you can go to the  
2 commissary and buy a debit card. So the inmate will  
3 understand that. Even if it's a facility from which  
4 an inmate can only make a collect call, which truly I  
5 don't think exists anymore, but if they did, the  
6 inmate would place the call to a person. The inmate  
7 phone system has to go through all of the telecom  
8 databases that are common to the industry, and it will  
9 find out if there is a billing agreement with the  
10 called party so that the collect call can get on a  
11 phone bill, so that the call can be charged to a  
12 person. It almost always is.

13 So the very first call an inmate makes,  
14 collect, to their friend, mother, whomever, goes right  
15 through. And the person answers the call and they  
16 accept it, and it goes on their bill. That's easy.  
17 In the very few instances where there's not a billing  
18 agreement that would reach the called party or the  
19 paying party, as Mr. Reynolds said, there is a product  
20 that Global has and that Securus has where they can  
21 place a collect call in the first whatever seconds are  
22 free, and they say, mom, I'm calling you collect. You  
23 are going to need to set up a billing agreement, and  
24 then, I have actually fielded a call like this from an  
25 inmate, and then mom will have the chance to go ahead

1 and do that.

2 My point is, that I do understand Staff's  
3 concern, but there are already many, many mechanisms  
4 in place to ensure that an inmate knows how to place a  
5 call and it gets through. I don't think giving out  
6 all these free calls, which would be extremely  
7 expensive, is necessary.

8 COMMISSIONER MARKS: Does the rule as  
9 proposed or should the rule include some requirement  
10 that the IOSF provides that safety valve in the event  
11 there is no billing agreement with the called party?

12 MS. JOYCE: I'm not certain how often it  
13 even happens that there's not a billing agreement, and  
14 I'm not sure. It's a matter of whether the facility  
15 wants that feature on the calling system. It's chosen  
16 in the bidding process in putting in the contract, and  
17 it's the facility's choice if they want inmates to be  
18 able to use that. But it is out there. I just don't  
19 think that there are inmates placed in an  
20 incommunicado situation in New Mexico. I think they  
21 are able to get their first call out, and they are  
22 able to understand how it works, and they are able to  
23 procure service.

24 COMMISSIONER MARKS: Now, it's in your  
25 company's interest to have them make these calls,

1     isn't it?

2             MS. JOYCE: Absolutely.

3             COMMISSIONER MARKS: Okay.

4             MS. JOYCE: That's our business, is selling  
5     phone calls.

6             MR. ALBRIGHT: But a lot of that initial  
7     cost goes in, as far as the interface and the  
8     switching with VeriSign or with the LEC, whoever is  
9     doing it, is embedded within that first -- in that  
10    first minute or so of a call.

11            COMMISSIONER MARKS: I understand. But I'm  
12    just saying that, here your interest is actually the  
13    same as Staff's, that the industry has an interest in  
14    letting the inmate and whoever is going to help pay  
15    for these calls figure out how to do that. Right? I  
16    mean, you would agree with that, John, wouldn't you?  
17    They don't want to make this -- I mean, they might  
18    want to charge a lot, that's the interests might  
19    diverge there, but in terms of figuring out how to  
20    access the system, their interest is the same as  
21    Staff's; isn't it?

22            MR. REYNOLDS: I was going where you started  
23    to go. I think they do want calls to be made, that's  
24    clear. But there's a wide divergence of rates in New  
25    Mexico and I'm not sure that IOSPs are all that keen

1 in publicizing that -- the range of rates in New  
2 Mexico. Some of the rates are quite high compared to  
3 others.

4 COMMISSIONER MARKS: But the inmate can't  
5 decide which correctional facility they are going to  
6 get placed in to get the cheaper rates; right?

7 MR. REYNOLDS: That's correct.

8 COMMISSIONER MARKS: Now, the rates are  
9 going to be fairly consistent between whether it's a  
10 prepaid account or a collect call?

11 MR. REYNOLDS: Across facilities, no.

12 COMMISSIONER MARKS: No, within a facility.

13 MR. REYNOLDS: Within a facility? I mean,  
14 there are different rates for different types of  
15 calls -- collect calls, prepaid collect calls, or  
16 calling card calls.

17 COMMISSIONER MARKS: Okay.

18 MR. REYNOLDS: I just know that -- you know,  
19 I accept what Ms. Joyce says that the inmate is given  
20 the information, or at least this rule will make sure  
21 that they are given the information. They will have  
22 access to the phone. But somebody on the outside --  
23 it takes two to make the phone -- somebody on the  
24 outside is -- I have tried it and I have done it.  
25 It's very difficult to find out what the rates are at

1 correctional facilities in New Mexico.

2 COMMISSIONER MARKS: We'll take care of the  
3 disclosure of the rates with the rule. But the  
4 question is, are there instances where inmates have  
5 been unable to tell their families, you know, you need  
6 to help me. You need to help pay for this. Is that a  
7 real problem? I think the real problem was -- were  
8 overcharges and lack of disclosure. I'm not -- is  
9 there a real problem with the -- where inmates and  
10 their families are unable to make that initial  
11 contact? Is that a real problem? Ms. Clifford.

12 MS. CLIFFORD: The NMCDLA supports this  
13 comment, and I would just -- I think it's important to  
14 focus it on the most important communication, which is  
15 from the incarcerated person to his or her attorney;  
16 right? That's the 6th Amendment guarantees that  
17 right, and I don't think it's appropriate to leave it  
18 as a matter of discretion with the IOSP whether or not  
19 those communications are allowed for one minute or a  
20 few seconds or whatever for that contact to be  
21 established.

22 And you know, obviously there is a dynamic  
23 here between allowing a free charge, a call, and  
24 allowing the company to shift the cost to other  
25 categories of calling, and I'm sensitive to that

1 because it makes the calling more expensive for those  
2 who have to pay for it. But I think the impetus  
3 behind this comment is really important, and if, you  
4 know, if the compromise needs to be struck around  
5 reducing that initial call to a minute or something  
6 shorter, I think that's probably appropriate. The  
7 institutions know how to do this because they provide  
8 three free calls within 20 minutes within  
9 incarceration at county facilities, so they have  
10 managed to accommodate that need and that requirement  
11 of law into county facilities.

12 I think it's appropriate to require  
13 something similar here, but not -- obviously you don't  
14 need to allow three calls in 20 minutes, but there is  
15 a means by which the industry has accommodated the  
16 requirement in the county facility, and I think that  
17 we should presume that they can do it here in other  
18 institutions.

19 COMMISSIONER MARKS: All right. And  
20 Ms. Clifford, at the risk of prolonging this, you  
21 know, I'm just wondering whether -- wouldn't the  
22 public interest be served if we just made it mandatory  
23 that the inmate have some way of making a call, a  
24 collect call, you know, assuming that the party on the  
25 other side is willing to accept the charges, but the



1 inmate always has some way of making a collect call?  
2 So if they -- wouldn't that meet the same interest?  
3 They would be able to contact that attorney or that  
4 family member or whoever and tell them how to set up  
5 the prepaid account or whatever, as long as they had  
6 the right to always make a collect call, regardless of  
7 what the billing arrangements were?

8 MS. CLIFFORD: Commissioner Marks, I would  
9 just add that in our experience the collect calls are  
10 vastly more expensive, and so I think there's a  
11 likelihood that the receiving party would reject it if  
12 the cost of it were disclosed.

13 COMMISSIONER MARKS: Okay.

14 MS. CLIFFORD: So that may not be an  
15 effective way to establish the communication.

16 COMMISSIONER MARKS: Okay.

17 MR. REYNOLDS: Can I make a comment on that,  
18 another related to that issue? A significant portion  
19 of calls going out of institutions are going to  
20 instruments that cannot take collect calls -- cell  
21 phones -- I mean land lines, users dropping, cell  
22 phones are becoming more and more of a primary phone  
23 for people, and that is being addressed through these  
24 prepaid collect arrangements, where the recipient of a  
25 call can set up an account, and the cost of a collect

1 call is deducted from that prepaid account, and that's  
2 designed, I believe, to maintain the flow of business  
3 to cell phones. But, you know, I just wanted to make  
4 that explanation.

5 COMMISSIONER MARKS: That's a good point.  
6 Are there any systems or states where the inmate who  
7 doesn't have a prepaid account set up can go to the  
8 phone, dial the number, and say, this is Jason Marks,  
9 and have an automated message sent, you know, that  
10 this is -- this is an informational call from the  
11 correctional facility where, again, Jason Marks is  
12 held, he would like to initiate contact with you. You  
13 can set up a prepaid account by doing this to permit  
14 that. The alternative is collect calls, which costs  
15 more, but an automated message to do that. Anybody  
16 doing anything like that?

17 MS. JOYCE: I will let Mr. Hopfinger address  
18 that. He is the expert on operations. But I would  
19 say with regard to cell phones, some correctional  
20 facilities as a matter of law prohibit calls to cell  
21 phones completely for security reasons. I don't think  
22 that's the case in this state, but there are companies  
23 now that specialize in setting up billing agreements  
24 so that a cell phone owner can get an inmate collect  
25 call. The Verizon Wireless types of world don't want

1 to deal with it, but this entity has made it happen.  
2 Inmates can get through cell phones.

3 Mr. Hopfinger can address that.

4 MR. HOPFINGER: Commissioner Marks, the  
5 answer is those systems already exist, and I know that  
6 our systems, Securus systems do this, and I'm sure  
7 that Global Tel\*Link systems do this.

8 Today, if a call goes to a cell phone, there  
9 are companies, as Ms. Joyce said, that have a contract  
10 with the cell phone carriers to accept collect calls.  
11 We try to work with those companies, and they will  
12 offer to that cell phone user two options. One, you  
13 can either take this call and it will be billed to  
14 your cell phone and that is their contract with the  
15 cell phone provider, and it's the cell phone provider  
16 that sets those rates, or you can press a button and  
17 it will connect you to our Securus service  
18 representative to set up an account for this call. So  
19 they have two options already. Those options already  
20 exist on cell phones.

21 We also have in our systems if an inmate  
22 calls a number and is unable to get through, that we  
23 will send a recorded message to that party saying an  
24 inmate is trying to reach you. Please contact this  
25 1-800 number to set up an account so they can get a

1 call.

2 COMMISSIONER MARKS: All right. Okay.

3 Let's go off the record.

4 (A recess was taken.)

5 COMMISSIONER MARKS: Folks, we're back on  
6 the record.

7 Do we need to talk about the toll-free call  
8 to Consumer License Division?

9 Okay. Ms. Joyce, what do you want to talk  
10 about?

11 MS. JOYCE: We understand the intent, but I  
12 believe it was the criminal lawyers association that  
13 wanted --

14 MS. CLIFFORD: Criminal Defense.

15 MS. JOYCE: Defense Lawyers, sorry, not the  
16 lawyers who are criminals.

17 MR. ALBRIGHT: That's another subject.

18 MS. JOYCE: The Criminal Defense Lawyers,  
19 I'm sorry. That's what I intended. They suggested  
20 language that a call in connection with a complaint to  
21 the Consumer Relations Division would be free and it  
22 had no limitation as to the length of the call or the  
23 number of the calls. And what Securus also noted is  
24 that it's troubling when the phrase "a complaint" is  
25 used, because it could be someone else's complaint.

1           It was just a lot of free calls that we were  
2 looking at, and tremendously, tremendously expensive.  
3 And although there is a toll-free number already to  
4 the Commission, you know, we think that that makes  
5 sense, and the inmate will be apprised of that number  
6 and so will the customer as part of all the  
7 disclosures we have to make. Giving it an unlimited  
8 amount of free calls to any consumer about any  
9 complaint is far too much.

10           COMMISSIONER MARKS: So you think they are  
11 going to call Mr. Baca, just to chat with his  
12 coworkers?

13           MS. JOYCE: I can see that, actually. I  
14 actually know that it doesn't happen here, but in  
15 other cases I have worked on entities that receive  
16 inmate calls regularly, like, legal aid societies and  
17 such, they do talk about getting endless calls from  
18 the same inmate who just wants somebody to talk to,  
19 and they are in the position of telling him to stop  
20 calling. That kind of thing it does happen.

21           COMMISSIONER MARKS: Mr. Albright?

22           MR. ALBRIGHT: Commissioner Marks, we didn't  
23 include it in our comments. We did have something  
24 very similar happen when we first put the 1-800 number  
25 as a compliance requirement on the printed bills of

1 customers following the -- I think it was the SR --  
2 no, it was the consumer protection rules. And Mike  
3 may remember this with regard to Cricket prominently  
4 displayed the 1-800 number and bolded it and put it on  
5 there, and within about a week we had, what, 100, 200  
6 calls, everyone who had a question about their bill,  
7 everybody who had a question about their -- how to set  
8 up an account or something. We had to go back and  
9 change how that was -- how that was promoted on the  
10 bill because everybody ended up calling the Consumer  
11 Relations Division.

12 MR. RIPPERGER: Mike Ripperger, Telecom  
13 Bureau Chief. But part of the problem was that  
14 Cricket was not answering the phone, either, seemingly  
15 and they would default to the Consumer Relations  
16 Division. My understanding is that whatever they have  
17 done, either the fixing of the brochures or answering  
18 the phones, they don't seem to have those sorts of  
19 problems like they used to with lots of calls to  
20 Consumer Relations Division. Just the normal amount.

21 COMMISSIONER MARKS: Ms. Joyce, isn't the --  
22 Well, skip that.

23 Ms. Clifford?

24 MS. CLIFFORD: Commissioner Marks, this  
25 might need some clarification. I have spoken with

1 Staff about this, and I think as a practical matter  
2 the way this would play out is people who are  
3 incarcerated are not going to be allowed to make a  
4 toll-free call. You they are not permitted to make  
5 toll-free calls. So from inside the correctional  
6 facility those calls will be charged to a prepaid call  
7 or otherwise they will be paid for. So as a practical  
8 matter, I think the person inside the facility would  
9 have to apply to the company for a refund, and I think  
10 that process, in itself, is going to suppress the  
11 number of calls that are made to the Consumer  
12 Division. Anyone out on the outside will have the  
13 opportunity to make the call toll-free, because the  
14 Commission provides that number to everyone.

15 So I don't think this is a big issue. I  
16 don't think it's going to cause a lot of inordinate  
17 number of calls to the Commission, and I think that  
18 the fact that the inmate has to pay for it initially  
19 is going to suppress the demand for it.

20 COMMISSIONER MARKS: What you are advocating  
21 for is not a complete toll-free call, is that they  
22 shall be credited back the cost of any calls to PRC's  
23 Consumer Relations Division?

24 MS. CLIFFORD: Yes.

25 COMMISSIONER MARKS: Okay. Okay. We had a

1 Staff proposal for some service quality standards with  
2 delayed feedback, noise, echo. Is there any --  
3 anybody need to add anything to the written comments  
4 on that one?

5 What about striking the 15-minute limit  
6 rule?

7 MR. ALBRIGHT: I'm sorry, which section are  
8 we at?

9 COMMISSIONER MARKS: Page 28 of your matrix.

10 MS. JOYCE: Your Honor, may I address that?

11 COMMISSIONER MARKS: Yes.

12 MS. JOYCE: 15 minutes is sort of the  
13 default call duration that's permitted by correctional  
14 facilities. That is the number that is set by the  
15 correctional facilities and not by the IOSP or anyone  
16 else.

17 And I believe that the change that is  
18 requested requires a written certification from every  
19 facility if they have a shorter permitted call  
20 duration, and it just seemed a little onerous. The  
21 IOSP, I believe, we had agreed in the initial rule the  
22 IOSP would just let the Commission know that the call  
23 duration at X jail was only 12 minutes, and this is  
24 something very rare in the first instance.

25 But the way that it had been amended made



1 it, really, a needlessly burdensome requirement.

2 COMMISSIONER MARKS: So, is there anyone who  
3 is going to dispute that the standard of practice is  
4 15 minutes? Is that a general agreement, just for the  
5 Commission's information?

6 Mr. Reynolds?

7 MR. REYNOLDS: Commissioner, I believe it's  
8 a standard practice at the county facility. I believe  
9 at the state facilities it's 20 minutes.

10 MR. ALBRIGHT: It is really up to the  
11 individual correctional facility, and some of them  
12 limit the amount of calls because they treat it as a  
13 privilege. And so in particular instances they don't  
14 they -- might allow a lesser minute than 15 minutes  
15 depending upon circumstances or whether somebody has  
16 done something to revoke some of their privileges  
17 within the particular jail and institution.

18 So I do see that as, I won't say being  
19 problematic necessarily, but I really think that's  
20 something within the control of the individual  
21 correctional institution.

22 COMMISSIONER MARKS: Okay. So what's the  
23 point of having this in our rule? I mean, do we want  
24 to constrain the IOSF from cutting a call shorter than  
25 what the facility allows in order to generate another

1 connection fee? Is that the harm, Mr. Reynolds? Why  
2 do we even need this section?

3 MR. REYNOLDS: Well, Commissioner, if the  
4 standard is 15 minutes, then the 15 minute maximum  
5 duration will be effective at most facilities. If  
6 it's -- what this rule simply states is if the maximum  
7 duration of a call is less than 15 minutes, if that's  
8 the standard policy at that institution, then the  
9 institution should make that known to the IOSP and the  
10 IOSP should make that known to the Commission.

11 COMMISSIONER MARKS: Again, what's -- are we  
12 worried that the IOSP is intentionally going to  
13 disconnect the call sooner than they are required to  
14 by the facility?

15 MR. REYNOLDS: That's -- that's not  
16 -- well --

17 COMMISSIONER MARKS: How about if -- let me  
18 just put something else out here. What if the rule  
19 said the IOSP shall not disconnect a call except as  
20 required by the facility? Should not disconnect a  
21 call for excessive time, or whatever, except as  
22 required by the facility? And I would like some  
23 response to that. And also, tell me in the  
24 alternative why we want to maintain records here at  
25 this Commission about how long each facility is

1 requiring or allows phones. I mean, that seems to be  
2 record keeping without a purpose.

3 What I would like to prevent or like to get  
4 the ability to fine, is if the IOSF is cutting calls  
5 short and causing people to reconnect. So again, you  
6 know, on a -- anyway, what do folks think about  
7 instead of having an "I" here, having a prohibition  
8 against disconnection except as required by the  
9 correctional facility rules?

10 Ms. Joyce?

11 MS. JOYCE: Securus would agree with that  
12 except in instances in which a prepaid account is  
13 being used, either the inmate's prepaid account or the  
14 debit card or the called party's account card and they  
15 don't have enough money for a full 15-minute call.

16 COMMISSIONER MARKS: Okay.

17 MS. JOYCE: That's the one instance I can  
18 think of.

19 COMMISSIONER MARKS: Or running out of  
20 money. Okay. Mr. Albright?

21 MR. ALBRIGHT: That was the same comment.

22 COMMISSIONER MARKS: Okay. And  
23 Ms. Clifford?

24 MS. CLIFFORD: I think that's a workable  
25 solution.

1 COMMISSIONER MARKS: Mr. Reynolds?

2 MR. REYNOLDS: I'll go along with the rest  
3 of the group.

4 COMMISSIONER MARKS: Okay. Let's move on  
5 here.

6 Let me ask you, what's -- what does H, 15 H  
7 mean? Is it to make sure that they are all automated  
8 or what? What are we regulating here?

9 MS. JOYCE: If I recall, Your Honor, I know  
10 Securus didn't propose this. I think Securus said  
11 okay. It could be something Staff requested.

12 MR. REYNOLDS: Well, Commissioner, my  
13 recollection is that this was simply to define the  
14 nature of the phone traffic. It's outbound traffic  
15 only, automated calls, and the nature of the calls and  
16 the sense of payment, collect or prepaid.

17 COMMISSIONER MARKS: Okay, on the -- on that  
18 service quality one I think I skipped past it. You  
19 guys said you didn't want to talk about it. What if  
20 -- I was thinking about it here. What if we put in a  
21 reasonable person's standard, which is, you know,  
22 i.e., an objective but undefined standard for service  
23 quality?

24 Mr. Albright?

25 MR. ALBRIGHT: Yes. I think -- you know, we

1 could probably agree to that. I mean, many of the  
2 service quality things, as I mentioned at the very  
3 initial outset are -- the IOSP has little control over  
4 those things once they get into the LEC system, or  
5 there could be problems at the jail themselves,  
6 background noise, you know, somebody -- their phone  
7 calls. So we would support something like that. It's  
8 just too hard for the IOSP, we feel, to place that  
9 responsibility on them when they don't have control at  
10 either end.

11 COMMISSIONER MARKS: Well, you wouldn't -- I  
12 think the IOSP bears responsibility for the equipment  
13 it does have control over.

14 MR. ALBRIGHT: No question about that. And  
15 we had that in our comments. If there are problems  
16 with the equipment we do have -- or there are trouble  
17 calls are initiated to the IOSP, they have people who  
18 go out to the facility, work on the equipment. And  
19 I would suspect for Securus it's the same as GTL when  
20 those things arise. And those can initiate from any  
21 source. They don't have to initiate from the -- from  
22 the institution.

23 COMMISSIONER MARKS: Okay. Okay. Let's go  
24 on to -- I have got 30 and 31, which is the  
25 communications with legal counsel. I'm on your matrix

1 page 30, beginning on pages 30 and 31.

2 Does anybody want to add anything on this?

3 All right. You know, when I read this, and  
4 I didn't study it carefully, you know, I agree with  
5 the policy that the criminal defense lawyers are  
6 putting forward, but it seems to me that's outside our  
7 jurisdiction and maybe our rule might require that the  
8 IOSF comply with all applicable laws, regulations and  
9 court rulings, but I don't think we can create  
10 -- create legal requirements or enforce, you know,  
11 ourselves. Ms. Clifford, I mean, am I wrong about  
12 that?

13 MS. CLIFFORD: I guess the concern is if  
14 there is this overlap in jurisdiction between the  
15 corrections department and the Commission, which seems  
16 to be sort of implicit in some areas, it would be  
17 important for the Commission to make clear that  
18 nothing in the rule should be interpreted to allow the  
19 recording of an attorney-client communication, so  
20 there isn't kind of a slip-up in the sense, well, the  
21 Commission's rule doesn't say we can't do it and --

22 COMMISSIONER MARKS: Isn't that a  
23 Constitutional guarantee?

24 MS. CLIFFORD: It is.

25 COMMISSIONER MARKS: Well, I don't think

1 anybody would make a mistake that our PRC regulation  
2 would trump the Constitution, but --

3 MS. CLIFFORD: Well, it's a protection  
4 that's observed in the -- in the practical application  
5 of these recording devices.

6 COMMISSIONER MARKS: Okay. Well, we'll pay  
7 attention to that and try and see if we can address  
8 that appropriately in the final. But again, I think  
9 we're clearly superceded by wiser and more powerful  
10 minds.

11 Okay. I got -- let's see. I got -- let's  
12 see. According to my notes here, I think aside from  
13 rates, the only thing I have got left is the reporting  
14 and confidentiality. I think that's --

15 MS. JOYCE: Your Honor, Securus had  
16 requested a small change to subpart 17.

17 COMMISSIONER MARKS: Okay.

18 MS. JOYCE: Which governs petitions for rate  
19 variances.

20 COMMISSIONER MARKS: Yes. That's -- I was  
21 going to deal with the rates all together, come back  
22 to rates.

23 MS. JOYCE: It was a timeline issue.

24 COMMISSIONER MARKS: I am still going to  
25 come back to rates, though.

1 Reporting requirements.

2 MR. ALBRIGHT: Section 18.s

3 COMMISSIONER MARKS: And 19. Do we have  
4 anybody who wants to supplement their comments on this  
5 stuff?

6 Is there a problem with giving presumptive  
7 confidentiality to the market data?

8 Okay. It was Securus's issues. Any  
9 objection on that one?

10 Ms. Clifford?

11 MS. CLIFFORD: Commissioner Marks, I believe  
12 that Securus was suggesting through its proposed  
13 change that confidential data not be disclosed to any  
14 party other than the Commission or its Staff. That  
15 was the -- our cause for concern.

16 COMMISSIONER MARKS: So how about if it was  
17 under a standard protective order where -- which  
18 typically restricts it from being disclosed to people  
19 involved in marketing or being used for marketing, for  
20 competitors or anything like that? Would that work?

21 Let the record reflect she is nodding.

22 MS. CLIFFORD: That would be our  
23 expectation, that it would be subject to the standard  
24 protective order.

25 COMMISSIONER MARKS: Okay. Standard



1 protective order would be all right.

2 And what is the value -- let me ask you.  
3 What's the value to the Commission of knowing the  
4 number of lines and that sort of thing? I mean,  
5 what --

6 MR. REYNOLDS: Commissioner, I can try to  
7 speak to that. It allows the Staff to make a judgment  
8 about the nature of the facility. It's been testified  
9 to in the 07-316 case that calls to provide service  
10 varies widely depending upon the facility, the size of  
11 the facility, the number of inmates, the number of  
12 lines would provide an indication as to the size of  
13 the facility, and that's why Staff thought it was  
14 relevant.

15 COMMISSIONER MARKS: Okay.

16 MR. ALBRIGHT: And Commissioner Marks, you  
17 know, our contention is to have everybody -- everyone  
18 report this on an annual basis ends up being reporting  
19 for reporting sake. What we would see, and I agree  
20 with John, I mean, it did come up in this 07-00316-UT  
21 case, that that was a main -- call volume and the  
22 number of lines were both -- and inmate populations  
23 were three of the major drivers that determined the  
24 cost at a specific facility. Obviously a facility  
25 with 3,000 inmates is likely going to have lower costs

1     than a facility with 27 is going to have. And  
2     obviously the lines, just the call volume makes a  
3     difference in the rates and fees that you can sustain,  
4     the cost of providing the service in the jail.

5             But back to this issue, it would seem to me  
6     that if a tariff comes in, either above or under the  
7     rate caps, and part of the justification is because of  
8     the unique conditions of the facility, that's the time  
9     to get that data and determine whether or not it's  
10    appropriate for that particular facility, but not to  
11    require every provider for every facility every year  
12    to provide that information to the Commission. It  
13    seems that the mechanism would be in place to look at  
14    that in the context of a specific tariff request.

15            COMMISSIONER MARKS: So the company that's  
16    requesting the variance, the higher rate, they would  
17    have the burden of coming and bringing their  
18    information. But what if Staff or the Commission  
19    wants to do some comparison to other facilities? So  
20    at that point we just subpoena it?

21            MR. ALBRIGHT: Just request it, and  
22    obviously every company is always obligated to respond  
23    to a request from the Commission.

24            COMMISSIONER MARKS: Okay.

25            MR. ALBRIGHT: And provide the information.

1 COMMISSIONER MARKS: Okay. Well, then, I  
2 would like to go to rates now.

3 So the -- Securus and T-Netix, we understand  
4 your position is that your costs are higher and so on  
5 and so forth, and you're losing money on every call  
6 and you can't wait to have more calls, but the concept  
7 here is that we have these -- we would have to cap,  
8 and you could be at -- I'm understanding -- if anybody  
9 could be at or under the cap and not have to go  
10 through a rate proceeding, and then if a company  
11 wanted to be above the cap and could justify that,  
12 they could come in for a variance. Am I understanding  
13 that correctly?

14 MS. JOYCE: That is true, Your Honor.

15 COMMISSIONER MARKS: Okay. And so the  
16 disputes -- what's in dispute is how long that  
17 variance proceeding could take. And then what else is  
18 in dispute?

19 MS. JOYCE: Well, Securus, simply  
20 reiterated, the position it's in, which is Securus  
21 could not agree to the stipulations at the time, could  
22 not agree to them for this rule.

23 The unrefuted and fully accredited cost  
24 expert testimony that Securus submitted shows we would  
25 be under water.

1           COMMISSIONER MARKS: I understand that.  
2       That's my attempt at humor is getting that. You are  
3       not conceding that -- you are not conceding that the  
4       rate caps are reasonable for you, but getting to the  
5       -- do you have a specific -- you're comfortable with  
6       the concept that you would have to apply and  
7       demonstrate that in your own case; correct?

8           MS. JOYCE: And without attempting to  
9       attribute credit to anybody, we are very pleased with  
10      that notion. I think the concern comes in that there  
11      would be so many facilities under water under these  
12      rate caps, there would be a much greater burden for  
13      Securus in filing a lot of petitions for variance, and  
14      in forthcoming contracts that are going to be newly  
15      bid for small jails with low call volume, that we can  
16      sit here today and predict that the rate caps wouldn't  
17      cover the costs. It just sort of immediately raises  
18      the bar on the number of variances that Securus and  
19      any other interested IOSP would have to file when we  
20      already have the data in the record from 316 about  
21      what Securus's costs are.

22           So we are very pleased with having the  
23      petition for rate variance and we hope, frankly, to  
24      use it very sparingly. For our purposes, for the  
25      Commission's purposes, the fewer proceedings the

1 better.

2 COMMISSIONER MARKS: Okay. But you can  
3 -- if you come in and get a variance for a facility A  
4 and then you need, you know -- either you also have  
5 facility B, well, you could consolidate those two  
6 cases and we can hear them together, but then  
7 subsequently you're interested in -- either you got a  
8 contract or you are interested in getting a contract  
9 for facility C, you could ask us to take -- to import  
10 the prior record, and if it makes sense we could do  
11 that. I mean, there are ways to reduce that burden  
12 when it's reasonable. But we wouldn't want to be  
13 using ten-year-old cost information, for example. We  
14 would probably be okay with using two-year-old cost  
15 information.

16 MS. JOYCE: That kind of discretionary  
17 approach, I think, sitting here it sounds reasonable.  
18 It's not how the petition for rate variance rule was  
19 crafted, however, because we did see it as something  
20 to be used very sparingly and it is very site  
21 specific. And because contracts come up for rebid at  
22 all different times, it would really be a site by site  
23 by site process. And because the way the rule is  
24 written, and it's something that Securus helped write,  
25 it is committed that if it needs to get a rate higher

1 than the rate cap it will make a showing. It will do  
2 that work. But what Securus wants to avoid is having  
3 tens, tens of contracts have to be put forth through  
4 the variance process every cycle because that would  
5 greatly increase Securus's transactional costs,  
6 frankly, and would not be very fun for this  
7 Commission.

8 COMMISSIONER MARKS: Right.

9 MS. JOYCE: So the record in 316 shows that  
10 the 15 cents per minute rate in the rate cap as  
11 proposed would put Securus below cost at 21  
12 facilities. I'm harkening to the expert testimony of  
13 Steven Siwek where he did a confidential rate analysis  
14 for Securus. That analysis was fully accredited by  
15 Hearing Examiner Lee Huffman. There was one site at  
16 which the costs would exactly equal the cap.

17 So from where Securus sits today it's under  
18 water at the vast majority of places. Now, for high  
19 volume contracts like Santa Fe County and the New  
20 Mexico DOC, their rates are well below the rate cap.

21 COMMISSIONER MARKS: What are you asking  
22 for? Are you asking us to give you a higher rate cap  
23 now? Or what -- or -- I mean, is that what you are  
24 asking for?

25 MS. JOYCE: Yes.

1           COMMISSIONER MARKS: And in the alternative,  
2           though, if we stay with what's in the proposed rule  
3           you said, what, you had 21 facilities that are under  
4           water? You could come in with one case for all of  
5           those 21 facilities. Is there something that prevents  
6           that?

7           MR. HOPFINGER: Commissioner Marks, the  
8           answer is yes, there is something, because those  
9           contracts aren't due at the same time.

10          COMMISSIONER MARKS: But --

11          MR. HOPFINGER: And those rates do vary  
12          between those contracts.

13          COMMISSIONER MARKS: But -- yes, but you are  
14          able to present them all in the -- in the case which  
15          number I didn't recollect, but you were able to  
16          present them all in one case previously; correct?

17          MR. HOPFINGER: We were required in that  
18          case, the response to a data request asking for  
19          information on all of our facilities, yes.

20          COMMISSIONER MARKS: All right. So what  
21          would be the problem? You know, I don't -- what would  
22          be the problem with requiring you to ask for a  
23          variance, and you came in, you have got a bunch of  
24          existing rates and you just ask for -- these are the  
25          rates we want for facility, you know, A through J, to

1 be approved for, you know, the next three years or  
2 what have you, and it would take -- and then if you  
3 had contract renewals or within that period you would  
4 be within your variances? And then when that  
5 variance, you know, is six months from expiring you  
6 come back in and say, this is -- you know, this is  
7 what we want again. You know, like -- and these are  
8 rate cases, but they are, you know, lesser intensity  
9 than a full-scale rate -- a return case with an ILEC  
10 or a public utility, but we're looking for a -- you  
11 know, it's going to be a facility-specific  
12 determination? Would that not work?

13 MS. JOYCE: Anything can work. I think -- I  
14 think everyone in this room wants to avoid another  
15 case 316. And -- well, I understand the Commission is  
16 concerned about rates and Securus understands why,  
17 we're simply reiterating the fact that, to be blunt,  
18 if Securus could have signed that stipulation in 2009  
19 it would have. It just couldn't. And in the  
20 proceeding where the Commission had adopted those  
21 stipulations, Securus made its point that we really  
22 can't sign onto these rates. We don't want them to  
23 become the presumptive rates. And the Commission in  
24 its final order approving the stipulation stated that  
25 we understand Securus's concerns and that they have



1 submitted a lot of cost information. Securus will be  
2 allowed to rely on findings related to that cost  
3 information when the rulemaking happens.

4 So we did have some findings in case 316 on  
5 that information in the initial decision that came out  
6 in November of 2010. And based on his crediting of  
7 Mr. Siwek's analysis, Mr. Huffman set forth rates that  
8 he thought would be appropriate, and Securus simply  
9 needed to make the Commission aware that the rates are  
10 higher than these rate caps and we want to avoid  
11 another case 316, and because Securus is committed to  
12 trying to compete for contracts everywhere, not just  
13 the really low rate, high volume ones, they just  
14 didn't want to have to take on this burden of 20  
15 petitions for rate variance for every time it bid.

16 I know we're trying to find a happy medium,  
17 but I'm just trying to figure it out.

18 COMMISSIONER MARKS: I haven't looked  
19 closely at the 316 case. Is there a formula? Did  
20 anybody ever look to see if there's a formula where  
21 you could say for this number of inmates and this  
22 number of annual calls, the rate is this, and then,  
23 you know, to multipliers and so forth?

24 MS. JOYCE: Mr. Huffman, actually, he  
25 created a tiered kind of system in the initial

1 decision, and he did it by call volume. So on page 89  
2 of the initial decision, he split up the rates in four  
3 tiers. He had facilities with call volume less than  
4 5,000 minutes per month, then 5- to 10,000, and then  
5 10- to 50,000, and then over 50,000. So he had a  
6 tiered system for his rates that he suggested. And  
7 the \$5 rate for the long distance call would apply to  
8 the lowest volume site, in other words, the most  
9 expensive call, long distance would be \$5. That's  
10 what we imported into our comments because we're  
11 talking about here one rate cap.

12 COMMISSIONER MARKS: So you would ask for a  
13 tiered system instead of a single -- a single rate  
14 cap.

15 MS. JOYCE: Well, I mean, we could try  
16 that. We came to this rulemaking believing that there  
17 would be just one number, so we chose the \$5 number  
18 because, again, that's the ceiling, the absolute  
19 ceiling.

20 COMMISSIONER MARKS: But then that opens the  
21 door to somebody -- to a provider in a high volume  
22 facility making windfall profits, doesn't it?

23 MS. JOYCE: They would lose the contract if  
24 they tried that, it's so price competitive now.

25 COMMISSIONER MARKS: Well, I guess, then,

1 you know, if I follow your reasoning, then we  
2 shouldn't have any rate caps because we would accept  
3 your argument this is all price competitive and you  
4 don't need any regulation of price. We're not taking  
5 that, so --

6 MS. JOYCE: And we're not asking for that.  
7 Believe me, we're not.

8 COMMISSIONER MARKS: And we are not  
9 accepting the argument, though, that price competition  
10 is going to keep the rates down. We feel there needs  
11 to be a regulated rate cap, should there be a tiered  
12 cap. And what do the other parties think about that?

13 MS. JOYCE: Securus -- I mean, in all  
14 candor, Securus asked the Commission please to adopt  
15 what Mr. Huffman did, and if you did that you would  
16 have this tiered system, and that's based on the costs  
17 showing that Securus made and that would be fair.

18 COMMISSIONER MARKS: Okay. So Staff, what's  
19 the problem with putting in a tiered system instead of  
20 a single rate cap?

21 MR. HOLLORAN: Mr. Hearing Examiner, I will  
22 make a comment, then I'll ask John to supplement it.

23 The first thing -- and Stephanie is not  
24 trying to misrepresent anything, but she is aware that  
25 there has been no final order in that case. It's an

1 RD that's currently pending before the Commission.

2 But it's also the case -- and I made this  
3 argument in the briefing, that what the Hearing  
4 Examiner was doing was providing a remedy for a  
5 determination of unjust and unreasonable rates for  
6 those parties that at least as a preliminary matter  
7 for RD purposes had been determined to have unjust and  
8 unreasonable rates. So he was saying given that we  
9 don't have just and reasonable rates, by statute I  
10 have to fashion just and reasonable rates. And that's  
11 my understanding of what has occurred that's pending  
12 before the Commission.

13 The other -- two of the parties stipulated  
14 and they have been voluntarily agreeing to work under  
15 a tentative, or I should say, a short-term rate cap  
16 structure.

17 So that's how I see the posture of the  
18 case. In terms of the tier system, I would like to  
19 let John address that reason.

20 MR. REYNOLDS: Commissioner Marks, in  
21 reference to the recommended decision, Ms. Joyce is  
22 right about the tiers that were laid out by the  
23 Hearing Examiner. But the data and the price data and  
24 the recommended decision does point to some divergence  
25 between prices and volumes. In other words, there's

1 some high volume facilities that charge the same rates  
2 as mid or low volume facilities. And so to that  
3 extent, I mean, Staff would be actually supportive of  
4 a tiered rate cap structure that would go some way to  
5 mediate this divergence.

6 COMMISSIONER MARKS: So we would still have  
7 rate caps, but we would have less requests for  
8 variances, if your only reason for coming in for  
9 variances were for a low volume facility, you would  
10 have more headroom. That would make sense.

11 MR. REYNOLDS: I agree, Commissioner.

12 COMMISSIONER MARKS: Mr. Albright?

13 MR. ALBRIGHT: Commissioner Marks, with  
14 respect to the comments made by Mr. Holloran, I can  
15 confirm that both GTL and PCS are operating under the  
16 rate caps as they had agreed to at the time, and as  
17 are reflected in the attachment to the proposed rule.

18 With regard to the tiered structure, I don't  
19 think we would have -- I mean, I would have to confer  
20 with my client, but based on discussions I had  
21 yesterday with them, I think they would support that  
22 if you wanted to go to a tier.

23 The other option that might be available --  
24 and again, I'm only speaking for discussions I have  
25 had with my client, not with any of the other IOSPs,

1 would be that you could modify the proposed language  
2 here to address it as to either determined by a  
3 variance, a rate variance, or by a Commission order in  
4 an adjudicated proceeding and that would cover any  
5 results that come out of 316. Whether that ends up as  
6 a tiered structure under case 316 or whether you roll  
7 that tier structure into this rule, if you did it that  
8 way that would also cover the broader term, whether a  
9 company comes in later or is still in 316, that would  
10 also cover you with respect to the rule.

11 So just -- I just throw that out there as a  
12 potential solution.

13 COMMISSIONER MARKS: That's reasonable.  
14 Just for the Commission's information, the clients  
15 that you represent who have agreed to the caps that  
16 are in the interim, are those -- do they serve high  
17 volume facilities?

18 MR. ALBRIGHT: In most cases they do. In  
19 most cases they do not have the smaller, low volume  
20 facilities.

21 COMMISSIONER MARKS: But there might be one  
22 or two of them and --

23 MR. ALBRIGHT: There could be a couple.

24 COMMISSIONER MARKS: Okay.

25 MR. ALBRIGHT: And I can say -- I can't

1 speak for ICS, but I think ICS only has one facility,  
2 don't they, John?

3 MR. REYNOLDS: I believe ICS has Curry  
4 County, maybe McKinley. Did they lose them? I'm not  
5 sure.

6 MR. ALBRIGHT: I'm not speaking for ICS in  
7 this proceeding.

8 MR. REYNOLDS: But PCS has all -- all  
9 relatively large facilities.

10 MR. ALBRIGHT: Bernalillo County Jail.

11 COMMISSIONER MARKS: I think the Commission  
12 can figure out the right way to talk about  
13 stipulations that the parties that did not come out  
14 writing in this rule -- or some of the comments.

15 The stipulation has -- just FYI, stipulation  
16 does not mean both to the Commission. It's Commission  
17 order. Commission order adopts something, then it  
18 will carry some weight. But parties stipulating, I  
19 don't think we're going to give you guys -- give a  
20 stipulation between Staff and parties the force of law  
21 until it's approved by the Commission, so it would be  
22 Commission orders.

23 MR. ALBRIGHT: Commissioner Marks, those  
24 stipulations that were approved by the Commission  
25 order.

1           COMMISSIONER MARKS: Yes, and we'll be  
2 talking about them as Commission orders, not that they  
3 were stipulations --

4           MR. ALBRIGHT: Right.

5           COMMISSIONER MARKS: -- in general.

6           Okay. I have reached the end of my areas of  
7 inquiry. I think I'll -- why don't we go around the  
8 room counterclockwise, and I'll give you all an  
9 opportunity to speak to us on anything that we didn't  
10 cover.

11           MR. ALBRIGHT: Commissioner Marks, again  
12 Jeff Albright speaking on behalf of GTL. Some of the  
13 requirements for incorporating the Attorney General's  
14 Office as an interested party as far as information or  
15 requesting service of such information on the Attorney  
16 General's Office, we have no objection to those, but  
17 we do think that making some of the requirements  
18 mandatory with regards to the Attorney General  
19 involvement or reporting requirements made to the  
20 Attorney General, we really feel that's at the  
21 discretion of the Attorney General, and that the PRC  
22 shouldn't be dictating those requirements on behalf of  
23 the Attorney General's Office.

24           Certainly the Attorney General is aware of  
25 this proceeding and was aware of both the rulemaking



1 and the 316 and all the other cases, made some  
2 comments about -- along the way, for example, about  
3 incorporating specific rates into the language of the  
4 rule, so we -- we decided to adopt those as a separate  
5 attachment or a separate procedure. We were sensitive  
6 to those. And I think Cydney Beadles was involved in  
7 those discussions with the Attorney General.

8 And Tim can correct me if I'm wrong, I think  
9 they made some comments about that, but I think -- I  
10 think in those comments where the recommendations are  
11 made about the Attorney General's Office, we would  
12 just propose that the Commission look at those closely  
13 and not presume that reporting requirements and  
14 additional things be made on or on behalf of the  
15 Attorney General, that the Attorney General has made  
16 no indication they are interested in having.

17 That's the only additional comment I have.

18 COMMISSIONER MARKS: All right.

19 MS. CAFFEY-MOQUIN: Just to clarify --  
20 Margaret Caffey-Moquin, Commission Counsel, is what  
21 you just said referenced in any way to your attachment  
22 A to your initial comments?

23 MR. ALBRIGHT: That's why we had the caps as  
24 an attachment. We would see that those -- we did  
25 not -- we were going to have a section in the rule,

1 and I believe -- and Tim, maybe you recall this as  
2 well -- there was some concern early on in one of the  
3 proceedings -- I can't remember if it was 316 or if it  
4 was in 442 or 384 -- but there was some concern by the  
5 Attorney General about having actual rates embedded  
6 within a rule. And so -- and rate caps embedded  
7 within a rule, but that it could be done via either  
8 separate order or by adoption or some kind of an  
9 attachment that would periodically change. And so  
10 that's why we attached them as an attachment to our  
11 filing. And I'm not sure how best the Commission  
12 should address those with respect to the issues of the  
13 actual rule.

14 MS. CAFFEY-MOQUIN: I see.

15 MR. ALBRIGHT: So -- and again, just being  
16 sensitive to that, there was no formal filing by the  
17 AG with respect to that, but I remember Cydney Beadles  
18 being involved in those discussions with Brian Harris  
19 at the AG's office, but they had some concern about  
20 that.

21 MR. HOLLORAN: Commissioner, just to add to  
22 that, I believe that what was being expressed there  
23 were similar concerns to what the AG had expressed to  
24 me with regards to the energy efficiency mechanism.

25 MR. ALBRIGHT: That's correct.

1 MR. HOLLORAN: So it was basically an  
2 analogous argument.

3 COMMISSIONER MARKS: All right.

4 MR. HOLLORAN: I don't know if that makes  
5 any sense to you.

6 COMMISSIONER MARKS: It does, and -- I  
7 understand. I think that's something we'll have to  
8 talk amongst ourselves about. I think I favor having  
9 it in the rule and I -- I think it's good for the  
10 public to be able to go some place, and go many places  
11 and see, oh, yes, the Commission actually -- these are  
12 the caps, and not have to search out some order. The  
13 issue with the energy efficiency rule was that it was  
14 not based on anything. It wasn't based on costs,  
15 whereas I suppose if what's being promoted to us would  
16 be the findings of 316, which has more of a rational  
17 basis.

18 Okay.

19 MR. ALBRIGHT: And we would have no  
20 objection if it is embedded within the rule, from  
21 GTL's perspective.

22 MR. HOLLORAN: Staff doesn't, either.

23 COMMISSIONER MARKS: Okay.

24 MR. HOLLORAN: Just sort of analogizing  
25 here.

1 COMMISSIONER MARKS: I don't know if you all  
2 saw, but Mr. Harris poked his head in here a couple of  
3 times but didn't stay, so --

4 Okay.

5 MR. ALBRIGHT: That's all I have.

6 COMMISSIONER MARKS: Mrs. Ives.

7 MS. IVES: Actually, Ms. Joyce. I'm just  
8 local counsel. But thank you, Commissioner.

9 MS. JOYCE: Your Honor, I just wanted to  
10 speak quickly about the petition for variance timeline  
11 and explain, and provide a little more information why  
12 Securus seeks a 30-day deadline instead of 45.

13 In case 316, Staff entered two exhibits and  
14 they were RFPs from a few counties. I would like the  
15 Commission to take administrative notice of Staff  
16 Exhibit 41, entered in case 07-316-UT. It's the RFP  
17 for Bernalillo County. The RFP was issued May 21st,  
18 and the bids were due June 12th, very tight time line.

19 I would also like the Commission to take  
20 administrative notice of Staff Exhibit 45 in that same  
21 case. That is the request for proposals issued by  
22 Santa Fe County. It was issued at some point in April  
23 and the due date for bids was May 13th. So again,  
24 tight deadlines.

25 COMMISSIONER MARKS: Okay.

1 MS. JOYCE: And the reason that we raise  
2 this is that, waiting 45 days to know whether you get  
3 your variance or not could really impede the carrier's  
4 ability to move forward, not only with setting a bid,  
5 but with finalizing the contract. We just would hope  
6 to get some finality, and we have built into our  
7 proposed rule a chance for Staff to comment and a  
8 chance for the carrier petitioner to respond, and a  
9 chance for the Commission to review it. And because  
10 they are going to be site by site specific, they won't  
11 be large matters. We would hope that we would get the  
12 30-day deadline in order that it works better with the  
13 bidding contracts process unique to this industry.

14 COMMISSIONER MARKS: If I was hearing  
15 correctly, in that first instance the -- you had,  
16 what, 20 days to bid? So 30 or 45 days, neither one  
17 would give you an answer on a variance before your bid  
18 was due.

19 MS. JOYCE: Right. But assuming we won,  
20 then you go forward with the contracting process.  
21 It's not final until you sign the contract. At least  
22 we would have some window in there where if we won the  
23 bid, but God forbid the variance wasn't given, there  
24 would be time, rather than having the carrier sign the  
25 contract, later find out its rate was refused, and

1 then be in this horrible position. We think having a  
2 quicker deadline would more efficiently ameliorate  
3 that problem.

4 COMMISSIONER MARKS: And if the Commission  
5 was to adopt something with some tiers in, that would  
6 take that concern away, in many cases, wouldn't it? I  
7 mean, you wouldn't be going through the variance for  
8 everything; correct?

9 MS. JOYCE: Right. And thank you for saying  
10 that. That is our aim as well. And that tiered  
11 system that Mr. Huffman wrote would probably put  
12 Securus in the position to need a variance very  
13 sparingly, so then it wouldn't be that big of a  
14 concern.

15 COMMISSIONER MARKS: Okay. I would have --  
16 I would have a lot of -- I'm not even sure we could do  
17 one of these cases in 45 days, but I know I couldn't  
18 do it in 30.

19 Okay. Anything else, Ms. Joyce.

20 MS. JOYCE: With regard to Staff's proposed  
21 changes that surround limited calls, for example, we  
22 haven't discussed this, but I did want to raise it.  
23 That all calls will be free for the first 60 seconds,  
24 because Staff would want billing to start on the 61st  
25 second, so that's first minute of every call would be

1 free. And then within the reporting section, which is  
2 part 19, they would want annual reports of calls that  
3 were a minute or less.

4 As Securus stated in its comments, the  
5 statute requires that the Commission has a record for  
6 making a rule, and there's no evidence in the record  
7 that either of those rules are needed. They are  
8 expensive. They are burdensome. There has not  
9 been -- there has been far from a rash of complaints  
10 about short calls. In fact, Securus researched this  
11 this morning. Since January 1, 2010, there have been  
12 only four complaints. They were informal, lodged  
13 either here or the Better Business Bureau. So with  
14 those two tribunals only four complaints since January  
15 1, 2010, and only one of them alleged an improperly  
16 disconnected call. So I don't think there's basis to  
17 adopt very expensive and onerous changes that Staff  
18 requested.

19 COMMISSIONER MARKS: Thank you. That was on  
20 my list and I -- okay.

21 Ms. Clifford.

22 MS. CLIFFORD: Commissioner Marks, I just  
23 want to touch upon the notice and service changes that  
24 we proposed in Section 14 regarding rates, terms and  
25 conditions -- 17, variances; 19, reporting

1 requirements; and 23, waivers. The idea here, we use  
2 the same language in each of those. The idea would --  
3 we're trying to accomplish that service would be made  
4 on interested parties so that an organization like  
5 NMCDLA that wanted to be apprised of changes in the  
6 way these services are offered or reports that go to  
7 quality of service issues would be served on us or  
8 like-minded organizations that monitor access by  
9 inmates to telecommunications. And this is the  
10 procedure the Commission has adopted in other cases,  
11 and I cited to the Qwest AFOR III case, where  
12 interested parties have to take the initiative to seek  
13 service of such filings. Once that's done, then they  
14 would automatically receive service of those filings  
15 in dockets that were established for the purpose of  
16 those reports or notices.

17 And we added the AG as a party that would  
18 receive notice automatically simply because the AG has  
19 a statutory duty to protect consumer interests. That  
20 will continue to be the case when Gary King is out of  
21 office, and I would hope future Attorney Generals  
22 would be interested in monitoring consumer issues such  
23 as the quality of telecommunications services to  
24 correctional facilities.

25 So I wanted to be sure that you understood



1 that we had requested that type of notice and service  
2 in each of those areas.

3 MR. REYNOLDS: I would just like to address  
4 what Ms. Joyce said about complaints. I don't know if  
5 she is speaking of formal complaints or informal  
6 complaints, but I know there have been a handful of  
7 informal complaints here at this Commission about  
8 short calls. And I don't think the number of  
9 complaints, four -- three or four, speaks to the  
10 number of short calls or to the size of the problem.  
11 We don't have the data about short calls. So I will  
12 just leave it at that. Thank you.

13 COMMISSIONER MARKS: Okay. Mr. Reynolds,  
14 when -- they raised the concern that if you allow  
15 one-minute calls with no charge we will have a  
16 plethora of inmates gaming it to make a lot of  
17 one-minute calls. Do you have any reason to believe  
18 that's not a reasonable concern?

19 MR. REYNOLDS: I don't know that -- the  
20 basis of that judgment. That doesn't strike me as all  
21 that reasonable, no.

22 COMMISSIONER MARKS: All right.

23 MR. REYNOLDS: I mean, there's gaming all  
24 around the correctional facilities, games where you  
25 have contracts -- I mean --

1 COMMISSIONER MARKS: Okay.

2 MR. ALBRIGHT: Commissioner Marks, I would  
3 like to respond to Mr. Reynolds --

4 COMMISSIONER MARKS: Yes.

5 MR. ALBRIGHT: -- for a moment. With regard  
6 to the one minute calls, I'm not sure -- I'm not sure  
7 it's appropriate for this Commission to direct that  
8 the IOSP provide free telephone service, which is  
9 essentially what that first minute would be.  
10 Alternatively, even if the Commission were to impose  
11 that, then I think it would order because a lot of  
12 connection fees associated with the -- with the set-up  
13 to the LECs, with Qwest or Century Link or whoever  
14 happens to be incumbent, or the cost of .000037 cents  
15 that you pay to VeriSign or whoever to make those  
16 initial connections is embedded within that first  
17 minute. And so a large portion of the costs that the  
18 IOSP bears, or that anybody bears in setting up that  
19 initial minute is -- or setting up any call, that  
20 initial call, any call, is embedded within that  
21 initial minute. And Curt, feel free to jump in if I'm  
22 wrong on that.

23 But in return, if that were to be imposed,  
24 then I think the entire rate structure of the rest of  
25 the caps and the rates and fees and so forth that

1 would be charged would have to be revisited because I  
2 think it would skew the number substantially.

3 COMMISSIONER MARKS: Okay. Mr. Reynolds, I  
4 -- I don't know the way the Commission is going to go  
5 on this. I'm not -- I see more problems here. I see  
6 this really is an enforcement issue. If we were able  
7 to identify an IOSF that was routinely dropping calls  
8 and forcing redials, we could fine them under these  
9 rules; right?

10 MR. REYNOLDS: I believe so.

11 COMMISSIONER MARKS: And I think we ought  
12 to -- I would like to suggest that Staff, you know,  
13 when we are through with these proceedings and have  
14 some time, initiate some investigations where you look  
15 at call data. I think -- I think it would be possible  
16 to identify patterns of people, of a repeat call to  
17 the same number, you know, right after it, and  
18 identify patterns that indicate that calls were  
19 getting dropped. And I would suggest Staff do that,  
20 and if it finds patterns of call practices that look  
21 like there's a dropping going on, even without  
22 complaints coming from the inmates, that you pursue  
23 that and bring show cause orders. And I think we  
24 should use the deterrent of fining rather than -- to  
25 control that rather than something I think could prove

1 somewhat unworkable.

2 But again, my colleagues may disagree, but I  
3 offer that suggestion. And I think even it -- it  
4 would be something to do even if we were giving free  
5 minutes.

6 Thanks. Do we have anything else anyone  
7 else wants to put in the record?

8 MS. CAFFEY-MOQUIN: I have two questions,  
9 Commissioner Marks, and they are under the definition  
10 section. Page 2 of the Commission's proposed rule,  
11 these would be at Section 7 D and G, and it's just for  
12 my own enlightenment, that I would ask if anyone could  
13 specify for me whether correctional institutions  
14 defined here as a jail, prison, penal facility or  
15 other confinement facility is contemplated to include  
16 any sort of mental health facility?

17 MR. ALBRIGHT: And Margaret, I can address  
18 that because that came up repeatedly when we were  
19 deciding what to call these. And in fact, the reason  
20 we went with institutional operator service provider  
21 was because in some states -- I don't know that we  
22 provide it here, but I know my client in some states  
23 does have mental health facilities, does have some  
24 senior care facilities as well, where they provide  
25 service like Alzheimer's facilities and those types of

1 things. So when we had other confinement facilities,  
2 it had envisioned that those might be, for example,  
3 where you have an Alzheimer's-related type facility or  
4 health care facility or something like that. So that  
5 was the reason we had other confinement facility.  
6 That was envisioned not necessarily for incarcerated  
7 or jailed people.

8 MS. CAFFEY-MOQUIN: Then I would ask whether  
9 correctional institution is really an appropriate term  
10 for this concept.

11 MR. ALBRIGHT: Well, the other thing we  
12 could do is keep correctional institution there where  
13 we have jail, prison or penal facility, and then we  
14 could expand, perhaps, the definition of what inmate  
15 operator service or where that is, or service  
16 provider, and expand definition F, then, to pick up  
17 other confinement facilities, and change the language  
18 there, make that adjustment.

19 MS. CAFFEY-MOQUIN: I might suggest simply  
20 using confinement facility as the operative defined  
21 term.

22 MR. ALBRIGHT: And we would be fine with  
23 that.

24 MS. CAFFEY-MOQUIN: My other question is,  
25 for definition G, Institutional Phones, "a telephone

1 instrument accessible only to confined persons in a  
2 correctional institution," it seems to me that there  
3 would be many instances where that phone might also  
4 be -- particularly in, say, an Alzheimer's facility,  
5 might be used by a guest or a worker at the  
6 confinement facility. So I am a little troubled by  
7 the inclusion of the word "only." Could someone  
8 perhaps clarify what is intended there?

9 MR. ALBRIGHT: Yes. Maybe Curt can expand  
10 on it, but I did have this discussion with -- and  
11 usually there are separate sets of phones and that are  
12 available within the facility, the jail or elsewhere,  
13 for either people to use or for visitors to use that  
14 are not the phone banks that are used by the inmates  
15 or the people who are confined. And those are  
16 separately -- those are usually separately connected  
17 to the IXC, so they would not be part of the  
18 IOSP-operated phones.

19 But Curt, correct me if I'm wrong on that.

20 MR. HOPFINGER: Curt Hopfinger. Yes, you  
21 would -- you said it very well. These are only the  
22 phones that are for the confined individuals, guests,  
23 workers, so forth. Should -- first off, should not be  
24 using these phones --

25 MR. ALBRIGHT: Right.

1 MR. HOPFINGER: -- because these phones have  
2 the specific safety security recording services on  
3 them that were meant specifically for the confined  
4 individual. Now, you may want to change the language  
5 on there because it says correctional institutional to  
6 confinement institution, but there is a distinction.  
7 And you are also absolutely correct, in many cases in  
8 waiting areas and where guests would be, public --  
9 standard public pay phones are provided that are  
10 not -- do not have all the features of the  
11 correctional facility.

12 MS. CAFFEY-MOQUIN: I see. So these are  
13 phones provided for the use of confined persons in  
14 such a facility?

15 MR. ALBRIGHT: Correct.

16 MS. CAFFEY-MOQUIN: Thank you.

17 COMMISSIONER MARKS: You know, it might be  
18 better instead of the words "accessible only," should  
19 be "provided for the use of."

20 MS. CAFFEY-MOQUIN: Thank you. That's all I  
21 have.

22 COMMISSIONER MARKS: Thanks everyone. That  
23 was a productive hearing. I took a little longer than  
24 I thought, but I think it was worth it. I think the  
25 Commission resolved some issues, and it will make our

1 final order easier. I appreciate everyone's comments  
2 and willingness to -- I think this is a continuation  
3 of a process that appears that I haven't been involved  
4 in intimately, but there has been a lot of  
5 compromising going on and I can tell that that's  
6 helped and it certainly helped me today. So thank you  
7 again, everyone.

8 (The hearing concluded at 3:54 p.m.)  
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BEFORE THE NEW MEXICO PUBLIC REGULATION COMMISSION

PETITION TO COMMENCE )  
RULEMAKING PROCEEDING FOR )  
INSTITUTIONAL OPERATOR )  
SERVICE PROVIDERS )  
 ) Case No.  
INMATE CALLING SOLUTIONS, LLC, ) 10-00198-UT  
AND PUBLIC COMMUNICATIONS )  
SERVICES, INC., )  
 )  
 )  
Petitioners. )  
 )  
\_\_\_\_\_ )

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## 9

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**EXHIBIT C**





December 17, 2008

**VIA ECFS**

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: CC Docket No. 96-128, Martha Wright Alternative Rulemaking Proposal

Dear Ms. Dortch:

Securus Technologies, Inc. ("Securus"), by and through counsel, files this letter in the above-named proceeding to provide data regarding the duration of inmate-initiated calls.

As Securus has explained, Petitioners' reliance in this case on an average call length of 15 minutes or 20 minutes is not an appropriate ratesetting tool. CC Docket No. 96-128, Letter from Stephanie A. Joyce to Chairman Kevin J. Martin at 6-7 (July 7, 2008). Inmate calls are much shorter. For example, Pay Tel Communications, Inc. has stated that the interLATA calls it carries average 9.42 minutes, and interstate calls average 8.87 minutes. CC Docket No. 96-128, Letter from Marcus W. Trathen to Marlene H. Dortch at 2 (Sept. 9, 2008).

Enclosed is the Declaration of Curtis L. Hopfinger, Director of Regulatory Affairs (dated December 17, 2008), setting forth the results of the call analysis performed by Evercom Systems, Inc. and T-Netix, Inc., the operating companies of Securus, at his direction. This analysis, which included the approximately 2,600 facilities that Evercom and T-Netix serve, reveals that 96% of these facilities have average call durations of 14 minutes or less, and 57% of these facilities have average call durations of 9 minutes or less. Hopfinger Dec. ¶ 3.

These results demonstrate that Petitioners' use of average call durations of 15 or 20 minutes, Petition at 19, does not accurately reflect the inmate calling market. As such, using these inaccurate call lengths to analyze cost recovery would result in improper rates. Petitioners rely on a select set of low calling rates, such as the rates charged at Colorado Department of Corrections facilities (\$1.25 per call plus \$0.19 per minute). *Id.* They then calculate that a 20-minute call from these facilities garners "a total per minute cost of slightly over \$0.25." *Id.* Petitioners also rely on the rates in place at Nebraska Department of Corrections sites which are \$0.60 per call plus \$0.16 per minute, resulting in a \$0.20 per-minute rate assuming a 15-minute

call. *Id.* This calculus, Petitioners advocate, demonstrates that the Commission should adopt a per-minute interstate rate of \$0.20 to \$0.25 with no permissible per-call charge.

Petitioners understand that inmate telephone service providers must recover their costs, though they continue to refuse to acknowledge that site commissions are an unavoidable exogenous cost of doing business in this space. Site commissions notwithstanding, all agree that below-cost rates are inappropriate. Indeed, as Securus and others have shown, below-cost would be confiscatory and thus unlawful. *E.g.*, Initial Comments of T-Netix and Evercom at 8 (May 2, 2007) (citing *Verizon v. FCC*, 535 U.S. 467, 524 (2001)). Yet Petitioners want to force providers to recover all costs via per-minute rates that are based on assumed call lengths that are twice the true average call length. If the Commission were to assume a length of even 15 minutes, the resulting rates would be below-cost in 96% of the facility sites that Evercom and T-Netix serve. If it assumed a length of only 10 minutes, rates would be below-cost in 57% of the facilities they serve.

Further, as the Hopfinger Declaration shows, we cannot provide a “silver bullet” answer as to average call duration. Call length, as well as call volume, varies widely across the approximately 2,600 correctional facilities — state, county, and local jails — that T-Netix and Evercom serve throughout the nation. These factors cannot be generalized even by type of jail: a state DOC facility may average 73 calls per month or 10,000 calls per month; a county jail may have an average call length of three minutes or fifteen minutes. Hopfinger Dec. ¶¶ 4-5.

Added to this complex usage data are the unique circumstances that the inmate telephone industry experiences in terms of billing and payment. As Securus has explained, the majority of inmate calls are collect which, as the Commission Rules dictate, cannot be billed absent completion (positive acceptance of the call). Letter from Stephanie A. Joyce to Chairman Kevin J. Martin at 5 & n.5 (May 23, 2008) (citing 47 C.F.R. § 64.705(a)(1)). Securus estimates that only 40% of inmate collect call attempts are completed. *Id.* n.6. Of the inmate calls that are completed, 15% to 20% of the resultant call charges will not be paid. *Id.* Thus, not only are inmate calls shorter than Petitioners believe, the pool of revenue from which Securus must recover its costs is smaller than what typical wireline residential service providers experience. All of these factors render it impossible to derive a per-minute rate that on its own will ensure cost recovery.

For these reasons, if any rate or rate cap is adopted for interstate inmate calls in this proceeding, it must include a per-call charge to ensure that inmate telephone providers recover their costs. As explained in the cost analysis sponsored by several service providers, dated August 15, 2008, this methodology is not only far more likely to permit cost recovery but it also comports with the Commission’s policy that costs should be compensated in the same manner in which they are incurred: per-call costs should be recovered by fixed rate, and per-minute costs should be recovered by a per-minute rate. CC Docket No. 96-128, Inmate Calling Services Interstate Call Cost Study at 16-19. Petitioners’ proposal to exclude all per-call charges for inmate telephone calls therefore would result in unreasonable, unlawful rates.

\*

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\*

Thank you for your consideration of this matter. Please do not hesitate to contact me with any questions or concerns you may have: 202.857.4534.

Very truly yours,

s/Stephanie A. Joyce  
*Counsel for Securus Technologies, Inc.*

cc: Donald Stockdate, Deputy Chief, Wireline Competition Bureau  
Marcus Maher, Associate Chief, Wireline Competition Bureau  
Randy Clarke, Legal Counsel to Chief, Wireline Competition Bureau  
Albert Lewis, Chief, Pricing Policy Division, Wireline Competition Bureau  
Pamela Arluk, Assistant Chief, Pricing Policy Division, Wireline Competition Bureau

**EXHIBIT D**

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARTHA WRIGHT, et al.

Plaintiffs,

v.

CORRECTIONS CORPORATION OF  
AMERICA, et al.,

Defendants.

Civil Action  
No. 00-293 (GK)

FILED

AUG 22 2001

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

O R D E R

This matter is before the Court on the Motions to Dismiss Plaintiffs' Complaint by Defendant telephone companies and Defendant Corrections Corporation of America ("CCA"). Upon consideration of the motions, oppositions, replies, the Motions Hearing held on August 9, 2001, and the entire record herein, for the reasons stated in the accompanying Memorandum Opinion, it is hereby

ORDERED, that the Motions to Dismiss the Complaint under the doctrine of Primary Jurisdiction are granted; it is further

ORDERED, that this case is dismissed without prejudice; it is further

ORDERED, that parties are directed to file the appropriate pleadings with the FCC to ensure that the issues raised in this lawsuit are presented to the FCC.

August 22, 2001

Date

Gladys Kessler

Gladys Kessler  
United States District Judge

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UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF COLUMBIA

MARTHA WRIGHT, et al.

Plaintiffs,

v.

CORRECTIONS CORPORATION OF  
AMERICA, et al.,

Defendants.

Civil Action  
No. 00-293 (GK)

FILED

AUG 23 2001

NANCY MAYER WHITTINGTON, CLERK  
U.S. DISTRICT COURT

MEMORANDUM OPINION

This matter is before the Court on the Motions to Dismiss Plaintiffs' Complaint by Defendant telephone companies and Defendant Corrections Corporation of America ("CCA"). Upon consideration of the motions, oppositions, replies, the Motions Hearing held on August 9, 2001, and the entire record herein, for the reasons stated below, the Court grants the Motions to Dismiss the Complaint under the doctrine of primary jurisdiction.

I. BACKGROUND

This case involves a putative class-action challenge to the rates and terms arising from the long distance telephone service arrangements between telephone companies and prison facilities operated by the Corrections Corporation of America, Inc. ("CCA").

The Court sincerely appreciates the informative and thoughtful contribution of Mr. John E. Engles, Deputy Associate General Counsel, Federal Communications Commission, during the Motions Hearing.

Plaintiffs may be divided into two groups: (1) inmates incarcerated at CCA facilities; and (2) family members, legal counsel and other recipients of inmate calls. Defendants are CCA<sup>1</sup> and various telephone companies.<sup>2</sup>

Specifically, Plaintiffs challenge the "exclusive dealing contracts" between CCA facilities and Defendant telephone companies. Under these contracts, each CCA facility grants to one telephone company the exclusive right to provide telephone services to that facility's inmates; in return, CCA receives a commission ranging from 25-50% of the revenues generated by the telephone companies from inmate calls. The exclusive dealing contracts further provide that the only way inmates may communicate by telephone is through a collect call-only feature, which charges the highest operator assisted rate.<sup>3</sup> Inmates cannot receive calls from outside the facility, and neither inmates nor recipients of

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<sup>1</sup>CCA is a private for-profit corporation which operates eighty prisons and jails in twenty-six states pursuant to agreements with state and local governments. CCA owns and operates four institutions housing D.C. prisoners: Central Arizona Detention Center; the Torrance County, New Mexico, Detention Center; Northeast, Ohio Correctional Center; and District of Columbia Correctional Treatment Facility.

Defendant telephone companies are Evercom Inc. ("Evercom"), American Telephone and Telegraph Company ("AT&T"), MCI Worldcom Communications Inc. ("MCI"), Pioneer Telephone Corporation ("Pioneer") and Global Telecommunications Link ("Global Tel Link").

<sup>2</sup> Plaintiffs allege, for example, that for a typical long-distance call, a Plaintiff must pay an initial surcharge of \$4.00 and then \$.55 per minute thereafter.



inmate calls are permitted to use other long-distance carriers or take advantage of less-expensive calling options for inmate-initiated calls.<sup>5</sup>

Plaintiffs allege that these exclusive dealing contracts have resulted in exorbitant and unconscionable long distance rates, which severely burden communication between inmates and their family members and counsel. They also claim that the terms of these contracts, rather than furthering any security purpose or covering the cost involved in providing phone service to inmates, are primarily designed to enrich Defendants (through the inflated rates and high commission fees, at the expense of the recipients of inmate calls. They allege violations of the First Amendment, Fourteenth Amendment, Sherman Anti-Trust Act, 15 U.S.C. § 1 et seq., Communications Act, 47 U.S.C. § 151 et seq., and D.C. state law. Plaintiffs seek monetary damages and an injunction against the exclusive dealing contracts. All Defendants have moved to dismiss the Complaint for failure to state a claim and/or for lack of jurisdiction.

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<sup>5</sup> For example, Plaintiffs allege that they are prohibited from using calling features such as direct-dial, dial around, and 1-800-COLLECT, all of which would result in rates considerably cheaper than the collect call-only rates mandated by the exclusive dealing contracts. See Pls.' Opp'n at 2; Compl. ¶¶ 9-15, ¶¶ 42-45, ¶¶ 51-72. They also allege that debit cards are not permitted in most CCA facilities, even though debit cards are regularly used in prisons operated by the Federal Bureau of Prisons. See Pls.' Opp'n, Ex. A ("Federal Bureau of Prisons Memorandum").

## II. STANDARD OF REVIEW

A complaint should not be dismissed for failure to state a claim unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." Conley v. Gibson, 355 U.S. 41, 43-46 (1957); Davis v. Monroe County Bd. of Educ., 119 S. Ct. 1661, 1676 (1999). For purposes of ruling on a motion to dismiss, the factual allegations of the complaint must be presumed to be true and liberally construed in favor of the plaintiff. Shear v. National Rifle Ass'n of Am., 606 F.2d 1251, 1253 (D.C. Cir. 1979).

## III. DISCUSSION

Defendants raise a number of jurisdictional bars to reaching the merits of this case.<sup>6</sup> Among other things, they urge that the Court should exercise its discretion to refer Plaintiffs' action to the FCC under the doctrine of primary jurisdiction. Specifically, Defendants argue that Plaintiffs' suit is primarily a challenge to the reasonableness of the collect call-only phone rates charged. Defendants maintain that because the FCC is statutorily charged with evaluating and regulating the reasonableness of phone rates, it is the forum best-suited to resolve Plaintiffs' claims.

The doctrine of primary jurisdiction is properly invoked in

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<sup>6</sup> Defendants Global, AT&T, and Pioneer assert that the Complaint should be dismissed for lack of personal jurisdiction. Defendant AT&T also asserts that the action should be dismissed against it for failure to join an indispensable party.

situations where a court has jurisdiction over a claim or case but it is likely that the case will require "resolution of issues which, under a regulatory scheme, have been placed in the hands of an administrative body." See Western Pacific R.R. Co., 352 U.S. 59, 64 (1956). Referral to the administrative agency does not deprive a court of jurisdiction, and a court has discretion either to retain jurisdiction or, if the parties would not be unfairly disadvantaged, to dismiss the case without prejudice. Reiter v. Cooper, 507 U.S. 258, 268 (1992).

No rigid formula exists for applying the doctrine of primary jurisdiction. Instead, invocation of the doctrine rests both on the advantages of allowing an agency to apply its expert judgment and on a concern for achieving uniform outcomes. Allnet Communications Service, Inc. v. National Exchange Carrier Association, Inc., 965 F.2d 1118 (D.C. Cir. 1992). Expert judgment extends to policy judgments needed to implement an agency's mandate Id. at 1120. Applying these principles to the case at hand, the Court concludes that Plaintiffs' claims are best resolved by initial consideration by the FCC and application of the primary jurisdiction doctrine.

#### **A. Advantages of Agency Expertise**

Although Plaintiffs have advanced numerous constitutional and statutory claims in this action, what is common to all is the complaint that the rates contained in the exclusive dealing

contracts between CCA and Defendant phone companies are unreasonable. Plaintiffs allege that those rates are inflated in part because of the 25-50% commissions received by Defendant CCA. Any remedy would require the Court to order one of two arrangements: (1) that the exclusive dealing contracts contain lower phone rates; or (2) that CCA offer inmates a choice of phone carriers or calling options.

Either arrangement, however, would require a determination of complex economic and technical issues, such as whether telephone rates can be lowered or whether the alternative telephone arrangements Plaintiffs seek are technologically feasible given the exigencies of the prison environment. As explained below, these are issues that have been and continue to be best addressed by the FCC.<sup>7</sup>

First and foremost, the FCC is statutorily charged with handling all claims contesting the reasonableness of telephone rates. 47 U.S.C. § 201(b) ("All charges, practices, classifications and regulations...shall be just and reasonable...[.]"). Consequently, courts routinely refer rate challenges to the FCC. See e.g., Ambassador, Inc. v. U.S., 325 U.S.

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<sup>7</sup> During the Motions Hearing, the Court asked Plaintiffs counsel to propose a remedy that would redress the injuries in this case. See August 9, 2001 Motions Hearing Transcript ("Motions Hearing Tr.") at 24:17-26:19. The inability of counsel to articulate a remedy that this Court could enter demonstrates the complexity of the issues involved and the need for FCC guidance on how best to resolve this matter.

317, 324 (1945) (holding that "where the claim of unlawfulness of a [tariffed] regulation is grounded in lack of reasonableness, the objection must be addressed to the [FCC]"); Western Pacific R.R. Co., 351 U.S. at 68-70 (holding that "both the issues of tariff construction and the reasonableness of the tariff as applied were initially matters for the [agency's] determination"); AT&T Co. v. IMR Capital Corp., 888 F.Supp. 221, 244 (D. Mass. 1995) ("[t]here is no doubt that a determination of the reasonableness or discriminatory nature of common carrier rules and charges is squarely at the heart of the FCC's mandate").<sup>8</sup>

Significantly, the FCC, in exercising its mandate to regulate the reasonableness of rates, is authorized to reject inclusion in Defendants' cost-basis of the 25-50% commissions received by CCA. Therefore, insofar as Plaintiffs' challenge is to the commissions received by CCA and the impact those commissions have on increasing rates, the FCC can adequately address those issues by prohibiting long-distance carriers from considering commission costs in their cost-basis. See Motions Hearing Tr. at 48:16-49:6. FCC has authority to order that Defendants' rates not reflect commissions

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<sup>8</sup> Contrary to Plaintiffs' contention, the D.C. Circuit's recent decision in MCI Worldcom, Inc. v. FCC, 209 F.2d 750 (D.C. Cir. 2000), does not affect the FCC's jurisdiction to regulate the rates of long-distance carriers. The D.C. Circuit decision prohibited the filing of tariffs for long-distance carriers, but in no way altered the FCC's statutory duty to ensure that the rates of those carriers are reasonable and non-discriminatory. See Motions Hearing Tr. at 8:9-20; 11:5-12.

or other considerations in cost-basis).

Second, Congress has given the FCC explicit statutory authority to regulate inmate payphone services in particular. 47 U.S.C. § 275(d) (providing authority to FCC to regulate payphone service, including "the provision of inmate telephone service in correctional institutions."). Indeed, the FCC has considered and continues to consider the issue of inmate calling services. See In the Matter of Billed Party Preference For Interlata O- Calls, Second Further Notice of Proposed Rulemaking, CC Docket No. 92-77, 11 F.C.C. Rcd. 7274 (rel. June 5, 1996) (declining to require billed party preference in the prison context for security reasons) (Attached as Ex. 18 to Def. AT&T's Mot. to Dismiss); In the Matter of Billed Party Preference For Interlata C- Calls, 13 F.C.C. Rcd 6122, Second Report and Order, CC Docket No. 92-77 (rel. Jan. 29, 1998) (declining to impose price benchmarks or rate caps) (Attached as Ex. 19 to AT&T's Mot. to Dismiss). The FCC therefore has already developed the necessary specialized expertise on the underlying telephone technology, the telephone industry's economics, practices and rates, and the feasibility of alternative phone systems that provide adequate security measures.

Third, the FCC has the explicit statutory authority to consider the reasonableness of Plaintiffs' request to have access to other calling options, such as 1-800 services and dial around. See Motions Hearing Tr. at 19:15-24 (the statutory requirement that

carriers make services available upon reasonable request provides the FCC with authority to determine whether Plaintiffs' request for different calling options is reasonable; 47 U.S.C. 201(a) ("It shall be the duty of every common carrier . . . to furnish such communication service upon reasonable request.").

Fourth, the FCC is currently considering challenges to the very same rates and practices challenged by Plaintiffs in this action. In the Matter of Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, Public Notice, CC Docket, No. 96-123, 14 F.C.C. Rcd. 7065 (rel. May 6, 1999). In particular, the pleadings in that proceeding raised the principle issues raised by the pleadings in this case: the reasonableness of inmate telephone rates and the feasibility of different calling options, such as debit cards, 1-800 calls, or direct dial services. See Motions Hearing Tr. at 12:23-14:2; 15:17-16:5; 17:17-18:23. Moreover, the FCC invited comments from parties representing inmates and their families in that proceeding, and has received comments from them. See Defs.' Reply, Ex. 5 ("Comments of Citizens United For Rehabilitation of Errants and the Coalition of Families and Friends

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\* The FCC has exercised this authority in analogous, non-inmate contexts on several occasions. For example, the FCC determined that AT&T's practice of giving volume discounts to single customers who have large communications needs but not to a group of customers who might be able to pool their needs was prohibited. See Motions Hearing Tr. at 20: 2-13.

of Prisoners of the American Friends Service Committee ("CURE/AFSC"), CC Docket No. 96-128 (filed June 21, 1999)). The pendency of nearly identical claims before the FCC makes invocation of the primary jurisdiction in this case particularly suitable. See Total Tele. Comm. Serv. v. AT&T, 919 F.Supp. 472, 478-479 (D.D.C. 1995).

Finally, courts faced with similar challenges to inmate phone rates have already referred such challenges to the FCC under the doctrine of primary jurisdiction. See e.g., Arsberry v. Illinois, No. 99-CV-2457 (N.D. Ill. March 22, 2000) (court referred to FCC because of its experience in determining fairness of telephone rates), aff'd in part on other grounds, Arsberry v. Illinois, 244 F.3d 556 (7<sup>th</sup> Cir. 2001) (dismissing the equal protection claim under the doctrine of primary jurisdiction but reaching the merits on the other claims); Dalmore v. Kentucky, 97-CV-709H (W.D. Ky. Feb. 10, 2000).

Accordingly, for all the foregoing reasons the Court concludes that the FCC is clearly in the best position to resolve the core issues in this case, namely the reasonableness of the

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<sup>10</sup> The Utility Consumers' Action Network ("UCAN") also filed comments in the FCC's proceeding and advised the FCC that it "recently undertook a detailed six month investigation into the billing practices of collect calls that originate from correctional facilities. UCAN seeks to share "its findings with the [FCC] and to educate the [FCC] staff as to paramount issues at stake in this proceeding." See Defs.' Reply, Ex. 7 ("Opening Comments of UCAN," CC Docket No. 96-128 (filed June 21, 1999)).



rates charged and the feasibility of alternative telephone arrangements in JCA facilities.<sup>11</sup>

#### B. Uniformity

Concern about inconsistent judgments further strengthens the case for application of the primary jurisdiction doctrine. Congress specifically delegated to the FCC the authority to regulate common carriers' rates, "classifications, practices, and charges," for interstate calls, including the rates and practices that apply to collect calls made by inmates. 47 U.S.C. § 203(a). As explained above, parties representing inmates are presently applying to the FCC for the same relief Plaintiffs seek in this action. As such, there is a risk that this Court may render a ruling that undermines or is inconsistent with FCC determinations on the rates and terms of Defendants' arrangements. There is also a risk that any decision would be inconsistent with the decisions of state courts and state regulatory bodies that are currently deciding these matters. See Defs.' Reply, Ex. 9 (October 26, 2000 Order dismissing class-action inmate challenge to phone rates on grounds of primary jurisdiction in Valdez v. State of New Mexico, No. D-0117-CV-2000-00104 (1<sup>st</sup> Judicial Dist. County of Rio Arriba)).

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<sup>11</sup> The Court observes that other non-JCA prison facilities have used different calling arrangements that provide for both lower rates and adequate security measures. See e.g., Pls.' Opp'n., Ex. 2 ("Federal Bureau of Prison Memo" (charge for debit cards in Federal Bureau of Prisons is \$.15 per minute)). The Court expects and anticipates that the FCC will examine this disparity in the course of its present proceeding.

Accordingly, the Court concludes that uniformity concerns counsel in favor of FCC referral.

### C. Constitutional Issues

Plaintiffs seek to avoid application of the primary jurisdiction doctrine by arguing that their challenge raises constitutional issues that should be resolved by this Court. However, the presence of constitutional issues in an action poses no absolute bar to invoking primary jurisdiction. See Allnet Communications Service, Inc., 965 F.2d at 1121 (concluding that even a constitutional issue may warrant an "initial take" by the Commission).

The constitutional issues are certainly no bar in this case. First, the FCC has considered constitutional issues in the telephone regulatory context in the past. See Motions Hearing Tr. at 49:21-50:5. Second, all of Plaintiffs' constitutional claims essentially revolve around the reasonableness of the rates charged. For example, Plaintiffs' equal protection claim is premised on the theory that Plaintiffs are charged a higher tariffed rate vis a vis other rate-payers -- both inside and outside similar prison facilities. Their claim is therefore one of a discriminatory rate charge, and is exactly the type of claim that falls within the primary jurisdiction of the FCC and state regulators. See e.g., Arsberry, 244 F.2d at 565.

Similarly, Plaintiffs' First Amendment and due process claims

are premised on the theory that the exclusive dealing contracts, and in particular, the collect call-only long distance rates are so unreasonable that communications between inmates and their family and counsel are unconstitutionally burdened. The FCC's "initial take" on the reasonableness of the current rates and on other terms of the exclusive dealing contracts, while not dispositive of the constitutional issues, would substantially assist the Court in its task of adjudicating these claims." See Alinet, 965 F.2d at 1121.

Importantly, the primary jurisdictional referral would mean only that the FCC will exercise its regulatory authority in the

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For example, in order to prevail on their First Amendment claims, Plaintiffs must first demonstrate that the exclusive dealings contracts entered into between Defendants result in rates which are so exorbitant that reasonable access to the telephone is denied. See Johnson v. California, 207 F.3d 650, 656 (9th Cir. 2000) (rates not "so exorbitant" to deny plaintiff phone access); Strandberg v. City of Helena, 791 F.2d 744, 747 (9th Cir. 1986) (as long as limitations on phone access are reasonable, there is no First Amendment violation); Washington v. Reno, 39 F.3d 1093, 1100 (6th Cir. 1994) (inmate has no right to unlimited telephone use and telephone access is subject to rational limitations in face of security interests).

If Plaintiffs were to make such a showing, this Court would then have to evaluate whether the current arrangement resulting in the burdening of phone access is reasonably related to a legitimate penological interest. See Turner v. Safley, 462 U.S. 78 (1983). The FCC has considered and continues to consider factual issues bearing on this question, such as the costs associated with serving inmate facilities, the level of bad debt associated with inmate payphone service providers, factors prohibiting the use of debit cards, the burden on rate-payers, and the feasibility of other billing options.

first instance. After the FCC does so, to the extent that any constitutional claims remain the Court will have the benefit of the agency's expert findings in addressing them. See e.g., Far East Conference v. United States, 342 U.S. 570, 574-575 (1952). Primary jurisdiction doctrine requires that in "cases requiring the exercise of administrative discretion, agencies created by Congress for regulating the subject matter should not be passed over. This is so even though the facts after they have been appraised by specialized competence serve as a premise for legal consequences to be judicially defined." (emphasis added).

Therefore, in view of the fact that the Court would benefit from the FCC's expertise; that concerns for uniformity counsel against decision at this time; and that the constitutional issues are no bar to FCC referral, the Court concludes that the FCC is the entity best suited to make the initial determination of the issues presented by Plaintiffs' claims.

On a final note, the Court observes that there are a number of cases now pending throughout the country involving similar challenges to phone rates that are alleged to be unconscionable and discriminatory. These cases raise issues that are of great human concern to inmates, their family members and their counsel. The hardships of prison life are only exacerbated by limiting the ability of prisoners and their families and lawyers to maintain person-to-person communications. In referring this matter to the

FCC, the Court expects the agency to move with dispatch to conclude its ongoing proceedings so as to provide both courts and parties with meaningful analysis and guidance on these issues.

#### IV. CONCLUSION

For the reasons stated above, this case is dismissed without prejudice under the doctrine of primary jurisdiction.<sup>41</sup> An Order will issue with this Opinion.

Aug 22, 2001  
Date

Gladys Kessler  
Gladys Kessler  
United States District Judge

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<sup>41</sup> The Court has the option under the doctrine of primary jurisdiction of either staying the case or dismissing it without prejudice. The Court discerns no prejudice to the parties in dismissing, as opposed to staying, this case.

**EXHIBIT E**

CONTRACT AMENDMENT BETWEEN  
THE FLORIDA DEPARTMENT OF CORRECTIONS

AND

SECURUS TECHNOLOGIES, INC., THROUGH ITS WHOLLY OWNED SUBSIDIARY,  
T-NETIX TELECOMMUNICATIONS SERVICES, INC.

This is an Amendment to the Contract between the Florida Department of Corrections (“Department”) and T-Netix Telecommunications Services, Inc. (“Contractor”) to provide Statewide inmate telephone services.

This Amendment:

- Revises **Section II.**, E., Facility Implementation Plan and Transition of Service, paragraph 5;
- Revises **Section II.**, H., Inmate Telephone System Functionality (General);
- Revises **Section II.**, Q., 2., Other Contract Requirements, paragraph 1;
- Revises **Section III.**, A., Payment and Invoices, paragraphs 2 through 5;
- Revises **Section IV.**, A., Department’s Contract Manager;
- Revises **Section IV.**, B., Department’s Contract Administrator, paragraph 1; and
- Revises **Section VII.**, L., Disputes.

Original contract period:	September 25, 2007 through September 24, 2012
Amendment #1:	July 29, 2009 through September 24, 2012
Amendment #2:	January 29, 2010 through September 24, 2012
Amendment #3:	January 20, 2012 through September 24, 2012

In accordance with **Section V.**, **CONTRACT MODIFICATIONS**; the following changes are hereby made:

1. **Section II.**, E., Facility Implementation Plan and Transition of Service, paragraph 5, is hereby revised to read:

The Department will provide personnel from the Bureau of Contract Management and Monitoring to facilitate transition of services at each institution, including coordination of equipment installation.

2. **Section II.**, H., Inmate Telephone System Functionality (General) is hereby revised to read:

H. Inmate Telephone System Functionality (General)

The Contractor shall provide an Inmate Telephone Service (ITS) with a technology system fully supported by an infrastructure which has the capability to provide specified services such as secure and real-time monitoring of telephone calls meeting the Department’s system security requirements. In addition, the system shall contain a secure database for transactional call records and provide data feeds to the Department’s official data repository. This shall include redundant system(s) as deemed necessary to accomplish this requirement and a continuity of operations plan and disaster recovery plan which will ensure that the system and services will be available without disruption at the required service level.

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The ITS shall have programming setup to automatically accept the Department's "housing file" which shall update the Contractor's ITS on a daily basis to ensure the inmate's location (i.e., facility), EOS and other identifying information are accurately reported. The Department will be responsible for providing a daily "housing file" to the Contractor. This file shall contain the name and DC number of each inmate in the system, their end of sentence ("EOS") date, other identifying information and each inmate's location.

The inmate telephone system shall contain security features, which prevent unauthorized individuals from accessing any information held by the Contractor. Secure access to the system and the database shall be maintained at all times.

The Contractor shall provide complete support of all systems and software necessary to ensure provision of services at all times for the duration of the Contract. In addition, the Contractor shall monitor changes to associated interfaced systems and accommodate changes in their systems as needed to continue operations of the services and systems as specified herein.

All technical specifications and system requirements shall meet or exceed industry standards and, shall be in proper working order, clean and free from defects of features affecting appearance, serviceability, or the safety of the authorized user in normal intended use, unless otherwise required herein. The Contractor shall provide the Local Contract Coordinator – Operations with documentation of the standards (i.e., Bellcore, ANSI, etc.) to which its system will adhere.

The system shall be restricted to outgoing calls only. The system shall not process incoming calls at any time. The system shall allow for the Department to program times when the system will be operational, i.e., available or unavailable for inmate calls.

The system shall contain an automated announcement function capable of processing calls on a selective bi-lingual basis: English and Spanish. The inmate shall be able to select the preferred language using no more than a two-digit code.

During the call set-up process, the system shall provide a pre-recorded announcement, which complies with Code of Federal Regulations, Title 47, Volume 3, Part 710 (3)(ii), identifying that the collect call is coming from a specific inmate at a Florida Correctional Institution, stating rate and complaint information and containing a toll free number for the consumer's use. This announcement shall be heard by the answering party. The announcement shall also include the statement: "All telephone calls will be recorded except attorney calls."

The Contractor shall allow for the Department to have the ability to immediately and temporarily deactivate any inmate's telephone account, upon approval of the Warden/Duty Warden for any of the following reasons:

- 48-hours prior to any transfer
- 48-hours prior to any outside medical appointment
- 48-hours prior to any outside court appointment

The system shall have the capability to be deactivated (shut down), by Department or Contractor staff, quickly and selectively, at an individual facility, partial facility (single dorm) or on a global basis and to restrict all PIN access. The system shall be capable of de-activating the PIN feature by individual inmate telephone, groups of telephones and/or entire institutions, at the Department's



option. Regardless of this deactivation, the system shall restrict inmate calls to prepaid collect and normal collect calls. At no time shall the inmate telephones be unrestricted due to the deactivation of the PIN feature.

The system shall provide the capability to flag any individual telephone number in the inmate's "Approved Number List" as "Do Not Record". The default setting for each telephone number will be to record until flagged by Department personnel to the contrary.

The system shall provide capability for assigning an inmate's phone access to an individual telephone or group of telephones so that the inmate's account may only place calls from those designated telephones. These telephones shall still be capable of being used by an inmate whose phone access is not specifically assigned to an individual phone.

The Contractor shall ensure the system has a "smart fail-safe" power down service which is initiated upon alert by the uninterruptible power supply (UPS) that the UPS has switched to battery power because of a commercial mains power failure or irregularity. The system and UPS shall maintain all currently ongoing telephone calls for up to ten (10) minutes while blocking any additional call attempts after the event. After ten (10) minutes, if the UPS has not alerted the system that commercial power has been restored, the system shall power down to a quiescent state that allows it to resume full operation automatically after commercial power is restored. After power restoration, the system shall have a timer to delay for ten (10) minutes before call processing resumes to preclude unnecessary cycling if the commercial power is unstable.

In order to prevent a state-wide or region-wide system failure, there shall be control equipment at each major institution, with the exception of Gainesville CI.

#### 1. Network and Infrastructure Requirements

The Contractor shall provide a system that includes a monitoring component that is capable of being accessed through dedicated monitoring terminals and through a vendor-provided secure Internet connection from desktop, laptop or remote means by authorized Department personnel who have appropriate security clearance and have been provided Contractor-supplied security codes. The system shall be capable of monitoring calls from both dedicated monitoring terminals AND via secure, password protected internet access.

In addition, the telephone system shall interface with network services provided by local exchange carriers as well as inter-exchange carriers. This includes analog and digital facilities (i.e., analog business trunk, DS-1, etc.). The Contractor's response to the ITN provides the types of network services to which the system will interface and the purpose (use of a specific application) of such services for the Department.

#### 2. Software Requirements

The Contractor shall provide all software required to support the inmate telephone system. During the entire contract term, including any renewals, the software shall be the latest general release of the software including software for all equipment and monitoring terminals utilized in service delivery. Any software necessary for Department interface shall be provided at the expense of the Contractor, with no licensing fee to the Department.

All software must be compatible with a minimum of a Windows XP operating system and must operate with Internet Explorer version 5.5, at a minimum.

The Contractor shall provide all required software enhancements/upgrades to the system inclusive of service delivery. Beta and Field Tested Software shall not be provided unless specifically approved by the Department. Prior to any software upgrades or enhancements, the Contractor shall discuss the software benefits with the Department's Contract Manager and the Office of Information Technology.

### 3. Database Requirements

The Contractor shall provide a data record of all transactions through the inmate telephone system that shall be maintained in a database for monitoring and analysis of inmate telephone calls. This data is used to alert authorized Department staff of possible trends with inmate calls that could jeopardize the security of inmates, staff, or facilities.

The Contractor shall be responsible for the generation and creation of a centralized system database. The system shall provide the capability for every call in and out of the system to be recorded with a transaction record that includes, at a minimum, a recording of the telephone call in a .wav or other format acceptable to the Department.

The database shall be maintained in such a manner as to allow authorized personnel the capability to review and monitor inmate call data regardless of which Department facility is housing the inmate.

The database shall contain multiple data fields. At a minimum, the database shall contain all fields required to generate reports as indicated in Section II., M., and all information required to establish Inmate Phone Access as indicated in Section II, I., 2. Final data elements to be collected shall be subject to written approval by the Department.

The system shall provide the capability for the Department to download reports from the database, through secured internet access, as outlined in Section II., M., Reporting Requirements.

In addition, the Contractor shall provide access to the database through a secure "ftp" web server so the department can retrieve certain data on a daily basis. The Contractor shall provide certain data elements in a pipe delimited format, to be determined by the Department's Office of Information Technology. Data extracts shall be downloadable into a SQL Server database hosted by the Department of Corrections in such a manner as to allow the Department to perform further analysis on the system data.

The security and confidentiality of data in the system is of critical importance. The Contractor shall recover all inmate telephone data for all locations, to the point of full service operation, using a data backup. The Contractor shall perform all service and database back-ups and archiving. The Contractor shall provide all archival hardware, supplies, network and recovery procedures that will ensure that no data is lost.

The database shall have duplicate data storage devices with automated fail-over and automatic re-establishment of the duplicate databases upon replacement of the failed storage device and shall be equipped with automated fire detection and suppression equipment.

The system shall record all data with a historical transaction record and data shall be stored/archived for retrieval/backup in a database when requested by Department personnel in accordance with the following:

- a. All historical data shall be centrally stored and accessible for reporting purposes;
- b. This information must be available for reporting in a standard transaction file format;
- c. All current and historical data files shall be retained by the Contractor as specified for a period of five (5) years after contract expiration. Call records detail and call recordings shall be available "on-line" for a minimum of twelve (12) months from the date of the call and call records detail shall be available "off-line" for an additional forty-eight (48) months, or a total of sixty (60) months from the date of the call. "Off-line" records shall be in a format readily accessible to the Department upon request; and
- d. This information shall be available at no charge to the Department after termination of the contract.

All data shall remain the property of the Department and the Contractor shall not use data for any purpose other than as required in the contract without written permission of the Local Contract Coordinator - Operations

#### 4. System Calling Protocol Requirements

The Contractor shall ensure the system will only initiate calls in a "collect call" mode (prepaid or normal collect calls) to land and cellular lines with Billing Number Addresses (BNA's) for all inmate telephone calls. The only exception to this requirement will be for calls placed on coin-operated telephones at identified Work Release Centers. It is the responsibility of the Contractor to make the determination based on BNA information provided as to whether or not the telephone provider of the family and friends meets the criteria of the contract before approving their ability to accept calls from an inmate.

Calls shall be processed at a speed of fifteen (15) to thirty (30) seconds or faster and "call set-up time" shall not exceed six (6) seconds from completion of dialing to first ring. The system shall not provide a second dial tone to an inmate telephone without the inmate hanging-up the telephone receiver after the first call is completed.

Each call placed through the system shall be electronically identified by the system as being a call originating from a Florida Correctional Institution in 100% of the cases with or without the accompanying inmate PIN.

The system shall provide the option of either English or Spanish voice messages or prompts as programmed through a single prompt at the beginning of each call. The default setting for each inmate shall be English until flagged by Department personnel to Spanish. It is desirable that the system provide standard language prompts other than English and Spanish. The language provided shall be controlled by the inmate's account information. The Contractor shall provide a list of languages available to the Local Contract Coordinator - Operations upon request.

The system shall provide automated notification to an inmate of the call status (i.e., ringing, busy, etc). This notification may either be in the form of ringing, busy tones, Special Information Tone (SIT), or appropriate recorded messages.

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The system shall allow the inmate to hear the processing of the placed call to determine if a SIT with message or an answering device (i.e., answering machine, voice mail, etc.) has answered the call. At no time shall the system allow the inmate to speak (restricted voice channel) until the called party has accepted the call.

The system shall announce to the called party the name of the calling inmate, informing the called party how to accept calls and announcing to the called party the call charge rate, prior to acceptance, when a call is placed. The activation or deactivation of these features shall be determined by the Department.

If the party called does not accept a call, or if no one answers the call, the system shall inform the inmate of the situation and not simply disconnect the call.

The system shall allow for a minimum "ring time" prior to disconnecting the inmate call. This "ring time" parameter shall be established within set parameters determined by the Department and shall be consistent among Department facilities.

The system shall allow a called party to deny all future calls of a particular type from an inmate and shall provide notice to the inmate placing the call of such action.

The system shall accept the called party's response via Dual Tone Multi Frequency (DTMF) Touch-Tone Pad input from the telephone and voice response (Yes/No Response).

The system shall interject messages into a telephone call at random intervals (i.e., "this call is from a Florida Correctional Institution") as deemed necessary by the Department. The activation or deactivation of this feature shall be determined by the Department.

The system shall allow a called party to activate a code (via the touch tone pad of their telephone) that automatically deletes their telephone number from the calling inmate's "Authorized Telephone Number List".

The system shall also provide an alert or notification to authorized Department personnel to ensure that the inmate does not add any number deleted via the above indicated feature to his/her requested list of telephone numbers in the future. Notification or alert to the Department shall be via automated system update to the inmate's account information file.

**5. System Voice Quality Requirements**

The ITS shall provide quality of voice connections that meet or exceed appropriate industry standards in the United States and standards enacted by appropriate industry agencies or other organizations for transmitted and received levels, noise, cross talk and frequency range(s). The Contractor shall provide the Local Contract Coordinator - Operations with documentation of the standards (i.e., Bellcore, ANSI, etc.) to which its system adheres.

The voice quality level referenced above shall be in place for all telephone services at all stages of a call and shall not be affected by any other system feature, function or capability.

**6. System Call Blocking Requirements**

The ITS shall have call block capability and shall be responsible for ensuring that the system is programmed for call blocking.

Call blocking requirements shall apply to all inmate telephone equipment unless otherwise specified, and shall include, but not be limited to, the following types of calls:

- a. calls made to business numbers identified during the billing number address (BNA) search.
- b. calls made to any 911 number;
- c. calls made to any telephone numbers which incur excess charges, such as 900, 972, 976, 550, etc.;
- d. calls to current long distance carrier access numbers (i.e., 10333, 10285) or future 101-XXXX carrier access numbers;
- e. calls for all local numbers which access long distance carriers (i.e., 950-XXXX);
- f. call access to directory assistance access numbers (i.e., 411, 555-1212, etc.);
- g. call access to toll free numbers (i.e., 800, 888, 877, etc.) except the Florida Relay Service toll-free number(s), so that hearing impaired inmates may access a "Telephone Devices for the Deaf" (TDD) service; and
- h. calls made to pre-paid or pay-as-you-go phones or call access to any number upon request of the Department.

Only the following call blocking requirements shall apply to the coin-operated telephone equipment located at the Department's work release centers:

- i. calls made to any 911 number;
- j. calls made to any telephone numbers which incur excess charges, such as 900, 972, 976, 550, etc.;
- k. call access to toll free numbers (i.e., 800, 888, 877, etc.) except the Florida Relay Service toll-free number(s), so that hearing impaired inmates may access a "Telephone Devices for the Deaf" (TDD) service; and
- l. call access to any number upon request by the Department.

Call blocking shall not apply to coin-operated phones for visitors or the public at-large.

**7. System Monitoring, Call Recording and Playback History Requirements**

As set forth in Section II., H., 1., the inmate telephone system shall include a monitoring component that is capable of being accessed from a vendor-provided dedicated monitoring terminal and through a vendor-provided secure Internet connection from desktop, laptop or remote means by authorized Department personnel who have appropriate security clearance and have been provided Contractor-supplied security codes. The ITS shall monitor calls from both dedicated monitoring terminals AND via secure, password protected internet access.

The system shall allow for "real time" audible monitoring of inmate calls by specific inmate PIN number and/or terminating number entered by authorized Department personnel. The system shall allow for monitoring of inmate calls while in process ("real time") and shall be

configurable to allow for auto-forwarding specified calls in a “listen only” mode to a pre-designated telephone number in the Inspector General’s (IG) Office.

The system shall have query and search capabilities allowing Department investigators to quickly access telephone conversations that occurred during specific time periods, and/or were made from specific telephone instrument locations, etc.

The system shall record all inmate calls simultaneously and at any time (in “real time”) that a call is placed.

The call recording functionality shall be a fully digitalized service allowing for the use of a compact disc recorder (CD burner) utilizing industry standard recording file formats.

The system shall create a record of all calls that are monitored by any Department employee. This record will display an indicator, visible in that call entry that is in the list of inmate calls, which will indicate if that call has been played back by anyone. This indicator, which can be as simple as an icon that is activated when the call has been played back, will link to the detailed playback history of the call. The detailed playback history will list each date and time that the call was played back and the identity of the person who accessed the call.

This playback history shall only be visible to personnel from the Office of the Inspector General and access to this feature shall only be granted by the appropriate approving authority in the Inspector General’s office. Non-Inspector General personnel shall not have the ability to view or retrieve any call playback history information.

**8. System Restriction, Fraud Control and Notification Requirements**

The security and confidentiality of inmate-placed telephone calls is of critical importance. ITS security features which prevent unauthorized individuals from accessing any information held by the Contractor will provide for restriction to the system, fraud control for prevention purposes, and notification capabilities for attempted security violations or breaches. Secure access to the system shall be maintained at all times. The ITS shall have security capabilities that include, but are not limited to, the following:

- a. Fraud prevention features, which randomly interject pre-recorded announcements throughout the duration of the conversation to the called party indicating the source of the call.
- b. Detection and prevention capabilities related to fraudulent, illicit or unauthorized activity capable of detecting unusual or suspicious number sequences dialed or dialing patterns which the system identifies as possible attempts to commit fraud.
- c. A call alert feature. This feature shall alert Department personnel that a designated inmate is placing a call to a specific number that has been assigned alert status. This status is an investigative tool which will be activated by authorized Department personnel.
- d. Ability to detect an attempt by the called party to initiate a 3-way or conference call, to immediately terminate the call and to make a “notation” in the database on the inmate’s call with immediate notification by e-mail to the Assistant Warden for Programs and the Inspector General’s Office at that institution.

- e. Ability to immediately terminate a call if it detects that a called party's telephone number is call forwarded to another telephone number. The system shall make a "notation" in the database on the inmate's call and shall provide immediate notification of the attempt by e-mail to the Assistant Warden for Programs and the Inspector General's Office at that institution.
- f. Ability to deactivate the restrictions on the called party's attempt to initiate a 3-way or conference call on a per number dialed, per inmate basis. The system shall permit call transfer or 3-way conferencing of specific inmate calls placed to pre-designated privileged telephone numbers such as attorneys.
- g. Ability during any call to block the out-pulsing of all digits pressed by the inmate and all hook switch "flash" attempts, after the PIN and calling list number have been input, such that no dual tone multi-frequency (DTMF) or hook switch "flashes" will appear on the outside line.
- h. Capability for the Department to immediately and remotely turn telephones on and off, including individual telephones, groups of telephones, or an entire Department facility by Department staff with the appropriate authorization level. This service shall be available, via telephone, 24/7.

9. System Access Management Component

The system shall provide for authorized user access for the purposes of managing inmate phone access information in real time. Authorized Department staff and Contractor staff, as authorized by the Local Contract Coordinator - Operations and/or the Inspector General's Office, shall have the ability to immediately enter, delete, change, or modify any inmate phone system access information including, but not limited to calling privileges or restrictions pertaining to inmates.

The system shall allow for authorized Department user access to be established upon application by the prospective user and the approval of the concerned warden or assistant warden, and a designated representative from the Inspector General's Office, Central Office. This approval authorization shall be given only to the incumbent in these positions and cannot be delegated or assigned. Levels of authorized access shall be a menu-driven selection configured for each user, listing the various components of the system. Any modifications to access levels shall go through the same approval process as above.

Deactivation of user accounts may be approved by any one of the above-cited approving authorities individually, with an electronic notice sent to the designated Inspector General's Office representative.

The creation, approval, and modification of user accounts shall be available in both electronic and paper format. Accounts opened manually (with paper application) shall be processed into the electronic user account system by the ITS Contractor.

The system shall allow the creation of lists of currently authorized users by facility and/or IG Office as needed. A system-wide list of all current authorized users shall be provided to the Inspector General's Office, Central Office, quarterly. The system shall also maintain a list of all users, active or inactive, searchable by the user's last name, first name, and containing all periods of account activation.

The system shall allow Department personnel to temporarily restrict or disconnect service to an individual inmate telephone or station.

**10. System Network Status Monitoring Component**

The ITS shall provide a system network status monitoring component. The system status monitoring component shall, at a minimum:

- a. Show graphically in real-time the status of the system components at each Department facility and other locations, to include but not be limited to, call processor equipment, call monitoring equipment, call recording equipment, telephone station equipment, and network circuit connections.
- b. Show component status in a minimum of two conditions: "Green" for normal operation, and "Red" for failed or failing operation.
- c. Provide automatic reporting of component status changes (not manual input).
- d. Display and record event times, i.e., when any component changes status from "Red" to "Green", or vice-versa.
- e. Provide the service technicians the ability to log acknowledgments of component failures, log acceptance of responsibility for repair, and log comments on action taken.
- f. Provide the Contractor's ITS System Administrator accessibility to the display of status at all times. The status display shall be available at other locations such as the Contract Manager's office, via intranet computer access. Department personnel shall be allowed to observe the system status display at any time upon demand. All event records and technician logs shall be maintained for a minimum of thirty (30) days and shall be available to authorized Department personnel upon request.

**11. System Testing**

Upon contract execution, the Contractor shall provide a complete and comprehensive functional test plan to assure the Department of the system's readiness to accept inmate calling traffic. This test plan shall include a checklist of items to be performed by the Contractor's implementation team and verified by the Department's staff.

**12. System Acceptance**

The Contractor shall provide a complete and comprehensive acceptance plan for the system at each Department facility. System acceptance shall be determined by a consecutive thirty (30) day period during which the system must function "error free" after installation. The Contractor shall work with the Department to determine the actual definition of "error free" operation. Failure of the system to meet mutually agreed upon acceptance criteria for more than thirty (30) consecutive days may result in a request for replacement by the Department for that particular system component.

**13. System Documentation**

At the completion of the implementation/installation, the Contractor shall provide to each Department facility, the Contract Manager, and the Local Contract Coordinator-Operations, a complete set of service reference manuals that shall include information specific to the installation at the respective facility.



In addition, after installation at each respective institution, the Contractor shall supply documentation containing service request contact numbers, instructions on reporting and escalation procedures to the Local Contract Coordinator - Operations and Assistant Warden for Programs at the respective institution.

**14. System Disaster Recovery**

The Contractor shall have a written Disaster Recovery Plan and Continuity of Operations Plan and associated internal system equipment that shall be capable of providing for support in case of failures in power, telephone system, data networking, and Contractor's equipment at its host site through the user-level equipment provided by the Contractor, and for all natural or man-made disasters including flood or fire at the host facility. These plans and all updates will be reviewed and accepted by the Department and kept for reference purposes by the Department's Local Contract Coordinator - Operations, Office of Institutions, and Office of Information Technology.

The system shall be capable of recovering from a power outage automatically or remotely once commercial power is restored.

**15. System Technical Assistance/Contractor Customer Service Center**

The Contractor shall provide remote diagnostic support and trouble-shooting technical assistance for system and equipment twenty-four (24) hours a day, seven (7) days a week, including holidays.

The Contractor shall provide the authorized users a toll free contact number, answered, twenty-four (24) hours a day, seven (7) days a week for the purpose of reporting problems that might be experienced.

In addition, the Contractor shall provide a centralized Customer Service Center located in the Continental United States (preferably within the State of Florida) which is operational twenty-four (24) hours a day, seven (7) days a week, including holidays. The Contractor's Customer Service Center shall be responsible for handling all calls from family and friends regarding service issues, billing and any other issues relating to the ITS provided by the Contractor.

The Contractor shall also ensure that a minimum of two Service Representatives, as delineated in Section II., N., are provided specifically for staffing the Central Office location. The responsibilities of these individuals will include handling of inmate family complaints as well as the additional duties specified for Field Service Representatives in Section II., N.

**16. Grievances**

Inmates have the opportunity to file grievances about any aspect of their incarceration, including the provision of the ITS. Any grievances filed by inmates regarding the ITS shall be referred to the Contractor's Representative or designee, identified in Section IV, who shall review the informal grievance and provide information to the Warden or his/her designee for response as necessary. The Contractor shall furnish all information in a timely manner and in keeping with all applicable response deadlines. Any grievances not satisfied at the institutional level can be appealed by the inmate to the Bureau of Policy Management and Inmate Appeals for resolution. The Contract Manager reserves the right to resolve grievance matters on the

**CONTRACT C2372  
AMENDMENT #4**

Department's behalf. The Contractor shall provide the ITS within the parameters as defined in Section II., Scope of Service and as directed by the Department.

3. **Section II., Q., 2., Other Contract Requirements, paragraph 1, is hereby revised to read:**

2. Other Contract Requirements

Monitoring for Other Contract Requirements, identified in Section II., P., 2., shall be conducted no less than twice a year. Such monitoring may include, but is not limited to, both announced and unannounced site visits.

4. **Section III., A., Payment and Invoices, paragraphs 2 through 5, is hereby revised to read:**

The Department established a fixed "to connect" surcharge for service delivery of its ITS. The "to-connect" surcharge established by the Department shall be utilized by the Contractor for local, local extended area calls, and for all calls on the North American Dialing Plan, including interlata, intralata, and interstate calls. There shall be no additional rate per minute charges allowed for local coin and local extended area calls.

**COLLECT CALL SURCHARGE (Land and Cellular Lines):**

The Contractor shall provide inmate telephone COLLECT CALL service at the following surcharges and rates:

TYPE OF CALL	"TO CONNECT" SURCHARGE	RATE PER MINUTE
Local Extended Area	\$.50	\$0.00
Inter-lata	\$1.20	\$0.06
Intra-lata	\$1.20	\$0.06
Interstate	\$1.20	\$0.06

**PREPAID CALL SURCHARGE (Land and Cellular Lines):**

The Contractor shall provide inmate telephone PREPAID CALL SURCHARGE service at the following surcharges and rates:

TYPE OF CALL	"TO CONNECT" SURCHARGE	RATE PER FIVE MINUTE INCREMENT
Local Extended Area	\$.50	\$0.00
Inter-lata	\$1.02	\$0.30
Intra-lata	\$1.02	\$0.30
Interstate	\$1.02	\$0.30

**COIN OPERATED TELEPHONES (Land and Cellular Lines):**

The Contractor shall provide inmate telephone COIN OPERATED TELEPHONES service at the following surcharges and rates:

TYPE OF CALL	"TO CONNECT" SURCHARGE	RATE PER FIVE MINUTE INCREMENT
Local Coin	\$1.50	\$0.00
Local Extended Area	\$1.50	\$0.00
Inter-lata	\$1.20	\$0.30
Intra-lata	\$1.20	\$0.30
Interstate	\$1.20	\$0.30

TYPE OF CALL	"TO CONNECT" SURCHARGE	RATE PER FIVE MINUTE INCREMENT
1+Inter-lata	\$1.20	\$0.30
1+Intra-lata	\$1.20	\$0.30
1+Interstate	\$1.20	\$0.30

NOTE: Any fees, surcharges, or other types of costs associated with the Florida Relay Service are the responsibility of the family and friends accepting calls from inmates utilizing this service. The Contractor is only responsible for ensuring that inmates have the ability to connect to the Florida Relay Service, and is not responsible for ensuring the rates charged to the family and friends are the same as those rates provided in this section.

5. **Section IV.**, A., Department's Contract Manager, is hereby revised to read:

A. Department's Contract Manager

The Contract Manager for this Contract will be:

Lynn Hart, Chief  
Office of Contract Management and Monitoring  
Department of Corrections  
501 South Calhoun Street  
Tallahassee, FL 32399-2500  
Phone: (850) 717-3961  
Fax: (850) 922-8897  
Email: [Hart.Lynn@mail.dc.state.fl.us](mailto:Hart.Lynn@mail.dc.state.fl.us)

The Contract Manager will perform the following functions:

1. Maintain a contract management file;
2. Serve as the liaison between the Department and the Contractor;
3. Verify receipt of deliverables from the Contractor;
4. Monitor the Contractor's progress;
5. Evaluate the Contractor's performance;
6. Direct the Contract Administrator to process all amendments, renewals and terminations of this Contract;
7. Evaluate Contractor performance upon completion of the overall Contract. This evaluation will be placed on file and will be considered if the Contract is subsequently used as a reference in future procurements.

**CONTRACT C2372  
AMENDMENT #4**

The Contract Manager may delegate the following functions to the Local Contract Coordinators (LCC):

1. Verify receipt of deliverables from the Contractor;
2. Monitor the Contractor's performance; and
3. Will notify the Contract Manager that the work is completed and will email and /or fax any documents relating to the service.

The Local Contract Coordinators for this Contract will be:

**Operations:**

Lisa Stokes, OMC Manager  
Office of Contract Management and Monitoring  
501 South Calhoun Street  
Tallahassee, FL 32399-2500  
Phone: (850) 717-3678  
Fax: (850) 922-8897  
Email: [Stokes.Lisa@mail.dc.state.fl.us](mailto:Stokes.Lisa@mail.dc.state.fl.us)

**Accounting:**

Michael Deariso  
Chief, Finance and Accounting

**Mailing Address:**

501 South Calhoun Street  
Tallahassee, FL 32399-2500

**Physical Address:**

4070 Esplanade Way  
Tallahassee, FL 32311  
Phone: (850) 717-3827  
Fax: (850) 488-1196  
Email: [deariso.michael@mail.dc.state.fl.us](mailto:deariso.michael@mail.dc.state.fl.us)

6. **Section IV., B., Department's Contract Administrator**, paragraph one, is hereby revised to read:

B. **Department's Contract Administrator**

The Contract Administrator for this Contract will be:

Chief, Bureau of Procurement & Supply  
Department of Corrections  
501 South Calhoun Street  
Tallahassee, FL 32399-2500  
Phone: (850) 717-3700  
Fax: (850) 488-7189

7. **Section VII., L., Disputes**, is hereby revised to read:

Any dispute concerning performance of this Contract shall be resolved informally by the Contract Manager. Any dispute that cannot be resolved informally shall be reduced to writing and delivered to the Department's Chief of Staff. The Chief of Staff shall decide the dispute, reduce the decision to writing, and deliver a copy to the contractor, the Contract Manager and the Contract Administrator.

CONTRACT C2372  
AMENDMENT #4

to the Department's Chief of Staff. The Chief of Staff shall decide the dispute, reduce the decision to writing, and deliver a copy to the contractor, the Contract Manager and the Contract Administrator.

All other terms and conditions of the original Contract and any previous amendments remain in full force and effect.

This Amendment shall begin on the date on which it is signed by both parties.

IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed by their undersigned officials as duly authorized.

**CONTRACTOR:**

**SECURUS TECHNOLOGIES, INC. through its wholly owned subsidiary, T-NEXTIX Telecommunications Services Inc.**

SIGNED

BY:

Robert Picken

NAME:

Robert Picken

TITLE:

COO

DATE:

4/5/2012

FEID #:

752722144

**DEPARTMENT OF CORRECTIONS**

Approved as to form and legality,  
subject to execution.

SIGNED

BY:

Kenneth S. Tucker

NAME:

**Kenneth S. Tucker**

TITLE:

**Secretary  
Department of Corrections**

DATE:

4/10/12

SIGNED

BY:

Jennifer Parker

NAME:

**Jennifer Parker**

TITLE:

**General Counsel  
Department of Corrections**

DATE:

3/28/12

CONTRACT AMENDMENT BETWEEN  
THE DEPARTMENT OF CORRECTIONS  
AND

SECURUS TECHNOLOGIES, INC., THROUGH ITS WHOLLY OWNED SUBSIDIARY,  
T-NETIX TELECOMMUNICATIONS SERVICES, INC.

This is an Amendment to the Contract between the Florida Department of Corrections ("Department") and T-Netix Telecommunications Services, Inc. ("Contractor") to provide Statewide inmate telephone services.

This Amendment:

- Revises **Section III., A., COMPENSATION** to revise the COLLECT CALL SURCHARGE table, to revise the PREPAID CALL SURCHARGE table and to insert the COIN OPERATED TELEPHONES table; and
- Revises **Section IV., B. Department's Contract Administrator**.

Original contract period: September 25, 2007 through September 24, 2012

In accordance with Section V., Contract Modifications; the following changes are hereby made:

1. **Section III., A., COMPENSATION**, is hereby revised to revise the COLLECT CALL SURCHARGE table, to revise the PREPAID CALL SURCHARGE table and to insert the COIN OPERATED TELEPHONES table read:

**III. COMPENSATION**

**A. Payments and Invoices**

The Department established a fixed "to connect" surcharge for service delivery of its ITS. The "to-connect" surcharge established by the Department shall be utilized by the Contractor for local, local extended area calls, and for all calls on the North American Dialing Plan, including interlata, intralata, and interstate calls. There shall be no additional rate per minute charges allowed for local coin and local extended area calls.

**COLLECT CALL SURCHARGE:**

The Contractor shall provide inmate telephone COLLECT CALL service at the following surcharges and rates:

TYPE OF CALL	"TO CONNECT" SURCHARGE	RATE PER MINUTE
Local Extended Area	\$0.50	\$0.00
Inter-lata	\$1.20	\$0.04
Intra-lata	\$1.20	\$0.04
Interstate	\$1.20	\$0.04

**PREPAID CALL SURCHARGE:**

The Contractor shall provide inmate telephone PREPAID CALL service at the following surcharges and rates:

TYPE OF CALL	"TO CONNECT" SURCHARGE	RATE PER MINUTE
Local Extended Area	\$.50	\$0.00
Inter-lata	\$1.02	\$0.04
Intra-lata	\$1.02	\$0.04
Interstate	\$1.02	\$0.04

**COIN OPERATED TELEPHONES:**

The Contractor shall provide inmate telephone COIN OPERATED TELEPHONE service at the following surcharges and rates:

TYPE OF CALL	"TO CONNECT" SURCHARGE	RATE PER MINUTE
Local Coin	\$.50	\$0.00
Local Extended Area	\$.50	\$0.00
Inter-lata	\$1.20	\$0.04
Intra-lata	\$1.20	\$0.04
Interstate	\$1.20	\$0.04

2. **Section IV., B. Department's Contract Administrator**, is hereby revised to read:

**B. Department's Contract Administrator**

The Contract Administrator for this Contract will be:

Robert E. Staney, Chief  
Bureau of Procurement & Supply  
Department of Corrections  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2500  
Phone: (850) 488-6671  
Fax: (850) 922-5330  
Email: [staney.bob@mail.dc.state.fl.us](mailto:staney.bob@mail.dc.state.fl.us)

The Contract Administrator will perform the following functions:

1. Maintain the official Contract file;
2. Process all Contract amendments, renewals, and termination of the Contract; and
3. Maintain the official records of all formal correspondence between the Department and the Contractor.

**CONTRACT C2372  
AMENDMENT #1**

All other terms and conditions of the original Contract remain in full force and effect.

This Amendment shall begin on the date on which it is signed by both parties.

IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed by their undersigned officials as duly authorized.

**CONTRACTOR:**

**SECURUS TECHNOLOGIES, INC. through its wholly owned subsidiary, T-NEXTIX  
Telecommunications Services Inc.**

SIGNED

BY:



NAME:

Robert Pickens

TITLE:

CMO

DATE:

7/1/09

FEID #:

20-0722940

**DEPARTMENT OF CORRECTIONS**

Approved as to form and legality,  
subject to execution.

SIGNED  
BY:



NAME:

**Richard D. Davison**

TITLE:

**Deputy Secretary  
Department of Corrections**

DATE:

7/29/09

SIGNED  
BY:



NAME:

**Kathleen Von Hoene**

TITLE:

**General Counsel  
Department of Corrections**

DATE:

6/12/09



**CONTRACT AMENDMENT BETWEEN**  
**THE FLORIDA DEPARTMENT OF CORRECTIONS**  
**AND**

**SECURUS TECHNOLOGIES, INC., THROUGH ITS WHOLLY OWNED SUBSIDIARY,**  
**T-NETIX TELECOMMUNICATIONS SERVICES, INC.**

This is an Amendment to the Contract between the Florida Department of Corrections ("Department") and T-Netix Telecommunications Services, Inc. ("Contractor") to provide Statewide inmate telephone services.

This Amendment:

- Revises Section III., A., Compensation fourth paragraph, COIN OPERATED TELEPHONES.

Original contract period:  
Amendment #1

September 25, 2007 through September 24, 2012  
July 29, 2009 through September 24, 2012

In accordance with Section V., Contract Modifications; the following changes are hereby made:

1. Section III., A., Compensation, fourth paragraph, COIN OPERATED TELEPHONES is hereby revised to read:

**III. COMPENSATION**

**COIN OPERATED TELEPHONES:**

The Contractor shall provide inmate telephone COIN OPERATED TELEPHONE service at the following surcharges and rates:

TYPE OF CALL	"TO CONNECT" SURCHARGE	RATE PER MINUTE
Local Coin	\$0.50	\$0.00
Local Extended Area	\$0.50	\$0.00
Inter-lata	\$1.20	\$0.04
Intra-lata	\$1.20	\$0.04
Interstate	\$1.20	\$0.04

TYPE OF CALL	"TO CONNECT" SURCHARGE	RATE PER FIVE MINUTE INCREMENT
1+ Inter-lata	\$1.20	\$0.20
1+ Intra-lata	\$1.20	\$0.20
1+ Interstate	\$1.20	\$0.20

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**CONTRACT C2372  
AMENDMENT #2**

All other terms and conditions of the original Contract and any previous amendments remain in full force and effect.

This Amendment shall begin on the date on which it is signed by both parties.


IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed by their undersigned officials as duly authorized.

**CONTRACTOR:**

**SECURUS TECHNOLOGIES, INC. through its wholly owned subsidiary, T-NEXTIX Telecommunications Services Inc.**

SIGNED

BY:



NAME:

Robert T. Peters

TITLE:

Chief Marketing Officer

DATE:

1-8-10

FEID #:

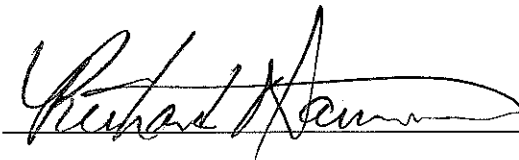
20-0722 940

**DEPARTMENT OF CORRECTIONS**

Approved as to form and legality,  
subject to execution.

SIGNED

BY:



NAME:

**Richard D. Davison**

TITLE:

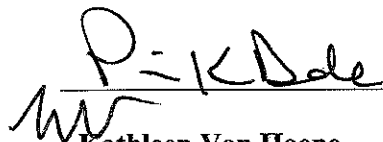
**Deputy Secretary  
Department of Corrections**

DATE:

1/29/10

SIGNED

BY:



NAME:

**Kathleen Von Hoene**

TITLE:

**General Counsel  
Department of Corrections**

DATE:

12-21-09

CONTRACT AMENDMENT BETWEEN  
THE FLORIDA DEPARTMENT OF CORRECTIONS

AND

SECURUS TECHNOLOGIES, INC., THROUGH ITS WHOLLY OWNED SUBSIDIARY,  
T-NETIX TELECOMMUNICATIONS SERVICES, INC.

This is an Amendment to the Contract between the Florida Department of Corrections (“Department”) and T-Netix Telecommunications Services, Inc. (“Contractor”) to provide Statewide inmate telephone services.

This Amendment:

- Revises **Section II.**, N., Contractor Staff Requirements;
- Revises **Section III.**, A., Payments and Invoices;
- Revises **Section IV.**, A., Department’s Contract Manager; and
- Revises **Section IV.**, B., Department’s Contract Administrator, first paragraph.

Original contract period:	September 25, 2007 through September 24, 2012
Amendment #1:	July 29, 2009 through September 24, 2012
Amendment #2:	January 29, 2010 through September 24, 2012

In accordance with **Section V., CONTRACT MODIFICATIONS**; the following changes are hereby made:

1. **Section II.**, N., Contractor Staff Requirements, is hereby revised to add #4.

4. Utilization of E-Verify

As required by State of Florida Executive Order Number 11-116, the Contractor identified in this Contract is required to utilize the U.S. Department of Homeland Security’s E-Verify system to verify employment eligibility of: all persons employed during the contract term by the Contractor to perform employment duties pursuant to the Contract, within Florida; and all persons, including subcontractors, assigned by the Contractor to perform work pursuant to the Contract with the Department. (<http://www.uscis.gov/e-verify>) Additionally, the Contractor shall include a provision in all subcontracts that requires all subcontractors to utilize the U.S. Department of Homeland Security’s E-Verify system to verify employment eligibility of: all persons employed during the contract term by the Contractor to perform work or provide services pursuant to this Contract with the Department.

2. **Section III.**, A., Payments and Invoices, is hereby revised to add:

4. Internet Access for Service Representatives

The Contractor shall reimburse the Department for recurring costs associated with providing internet access for two (2) Service Representatives located at the Department’s central office. The

Department shall provide two digital subscriber lines (DSL) that will operate at a speed of no less than 7.1 Mbps/768 kbps.

The Contractor shall submit payment on a monthly basis. The Department shall provide a monthly invoice to the Contractor based on the recurring costs associated with providing this service.

5. Final Commission Payment

The Contractor shall submit the final commission payment to the Department no more than forty-five (45) days after the end date of this Contract. If the Contractor fails to do so, the Contractor agrees to submit additional payment in the amount of fifteen hundred dollars (\$1,500.00) per day for each day of late submission (See Section II., R., 2., e.).

6. Subcontracts

No payments shall be made to the Subcontractor until all subcontracts have been approved, in writing by the Department.

3. **Section IV.**, A., Department's Contract Manager, is hereby revised to read:

A. Department's Contract Manager

The Contract Manager for this Contract will be:

Lynn Hart, Chief  
Bureau of Strategic Contracts  
Department of Corrections

**Mailing Address:**

501 South Calhoun Street  
Tallahassee, FL 32399-2500

**Physical Address:**

4070 Esplanade Way  
Tallahassee, FL 32311

Phone: (850) 717-3961

Fax: (850) 922-8897

Email: [Hart.Lynn@mail.dc.state.fl.us](mailto:Hart.Lynn@mail.dc.state.fl.us)

The Contract Manager will perform the following functions:

1. Maintain a contract management file;
2. Serve as the liaison between the Department and the Contractor;
3. Verify receipt of deliverables from the Contractor;
4. Monitor the Contractor's progress;
5. Evaluate the Contractor's performance;
6. Direct the Contract Administrator to process all amendments, renewals and terminations of this Contract;
7. Evaluate Contractor performance upon completion of the overall Contract. This evaluation will be placed on file and will be considered if the Contract is subsequently used as a reference in future procurements.

The Contract Manager may delegate the following functions to the Local Contract Coordinator (LCC):

1. Verify receipt of deliverables from the Contractor;
2. Monitor the Contractor's performance; and
3. Will notify the Contract Manager that the work is completed and will email and /or fax any documents relating to the service.

The Local Contract Coordinator for this Contract will be:

**Operations:**

Lisa Stokes, OMC Manager  
Bureau of Strategic Contracts

**Mailing Address:**

501 South Calhoun Street  
Tallahassee, FL 32399-2500

**Physical Address:**

4070 Esplanade Way  
Tallahassee, FL 32311

Phone: (850) 717-3678

Fax: (850) 922-8897

Email: [Stokes.Lisa@mail.dc.state.fl.us](mailto:Stokes.Lisa@mail.dc.state.fl.us)

**Accounting:**

Michael Deariso  
Finance and Accounting Director III

**Mailing Address:**

501 South Calhoun Street  
Tallahassee, FL 32399-2500

**Physical Address:**

4070 Esplanade Way  
Tallahassee, FL 32311

Phone: (850) 717-3827

Fax: (850) 488-1196

Email: [deariso.michael@mail.dc.state.fl.us](mailto:deariso.michael@mail.dc.state.fl.us)

4. **Section IV., B., Department's Contract Administrator**, first paragraph, is hereby revised to read:

B. Department's Contract Administrator

The Contract Administrator for this Contract will be:

Chief, Bureau of Procurement & Supply  
Department of Corrections

**Mailing Address:**

501 South Calhoun Street  
Tallahassee, FL 32399-2500

**Physical Address:**

4070 Esplanade Way  
Tallahassee, FL 32311

Phone: (850) 717-3700

Fax: (850) 488-7189

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All other terms and conditions of the original Contract and any previous amendments remain in full force and effect.

IN WITNESS THEREOF, the parties hereto have caused this Amendment to be executed by their undersigned officials as duly authorized.

**SECURUS TECHNOLOGIES, INC.** through its wholly owned subsidiary, **T-NEXTIX Telecommunications Services Inc.**

Randy Lutz

Robert Pickens

COV

1-11-12



Approved as to form and legality,  
subject to execution.

Robert

**Kenneth S. Tucker**

**Secretary  
Department of Corrections**

1/20/12

L. Oongkuz M. Rdjuz

**Jennifer A. Parker**

**General Counsel  
Department of Corrections**

12/6/11

**CONTRACT BETWEEN  
THE DEPARTMENT OF CORRECTIONS**

**AND**

**SECURUS TECHNOLOGIES, INC., THROUGH ITS WHOLLY OWNED SUBSIDIARY,  
T-NETIX TELECOMMUNICATIONS SERVICES, INC.**

This Contract is between the Florida Department of Corrections ("Department") and SECURUS Technologies, Inc., through its wholly owned subsidiary, T-Netix Telecommunications Services, Inc. ("Contractor") which are the parties hereto.

**WITNESSETH**

Whereas, the Department is responsible for the inmates and for the operation of, and supervisory and protective care, custody and control of, all buildings, grounds, property and matters connected with the correctional system in accordance with Section 945.04, Florida Statutes;

Whereas, the Contractor is a qualified and willing participant with the Department to provide statewide inmate telephone services;

Whereas, this Contract is Revenue Generating and is not a purchase as contemplated by Chapter 287, Florida Statutes;

Whereas, although not required to be procured through a competitive solicitation, this contract resulted from the Department's issuance of ITN #06-DC-7695.

Therefore, in consideration of the mutual benefits to be derived hereby, the Department and the Contractor do hereby agree as follows:

**I. CONTRACT TERM AND RENEWAL**

**A. Contract Term**

This Contract shall begin on the date on which it is signed by both parties, and shall end at midnight five (5) years from the date of execution. In the event this Contract is signed by the parties on different dates, the latter date shall control.

This Contract is in its initial term.

**B. Contract Renewal**

The Department has the option to renew this Contract for one additional five (5) year period after the initial Contract period upon the same terms and conditions contained herein and at the renewal prices indicated in Section III, Compensation. Exercise of the renewal option is at the Department's sole discretion and shall be conditioned, at a minimum, on the Contractor's performance of this Contract and subject to the availability of funds. The Department, if it desires to exercise its renewal option, will provide written notice to the Contractor no later than thirty (30) days prior to the Contract expiration date. The renewal term shall be considered separate and shall require exercise of the renewal option should the Department choose to renew this Contract.

## **II. SCOPE OF SERVICE**

### **A. Services to be Provided**

The Contractor shall provide a fully operational, local and long distance, secure and reliable statewide Inmate Telephone Service (ITS). The Contractor-provided ITS system shall be inclusive of all equipment, installation, infrastructure and network, training, operation, and ongoing repairs and maintenance of the entire system and its components which, at a minimum, shall meet the Department's requirements set forth in Section III, Scope of Service of ITN #06-DC-7695, which is incorporated by reference herein, as if fully stated. E-messaging services are also required to be provided by the Contractor.

### **B. Rules and Regulations**

1. The Contractor shall adhere to any and all municipal, state or federal requirements for ITS installation, certification, training or registration during the life of the Contract. Failure to comply with present and future municipal, state or federal requirements will result in termination of the contract with the Contractor and the payment by Contractor of any application fees, penalties, fines or other costs or monetary payment assessed against or incurred by the Department for violation of such requirements.
2. The Contractor shall be responsible for compliance with all regulatory requirements imposed by local, state and federal regulatory agencies for all ITS and related services provided throughout the duration of the Contract.
3. The Contractor shall be responsible for making all ITS modifications necessary to allow inmates to place calls in compliance with any industry dialing requirement change(s) at no cost to the Department and within a time frame agreed to by the Department's Local Contract Coordinator - Operations, to ensure proper use of the ITS by inmates and Department personnel.
4. The Contractor shall keep all call processing and call rating information current by reporting all changes to the Contract Manager. This information shall include, but not be limited to, local exchanges, area codes, country codes, vertical & horizontal coordinates and any other information necessary to accurately process and rate calls.
5. The Contractor shall be responsible for complying with and updating the ITS for any regulatory changes and requirements during the life of the Contract. These regulatory changes include federal, state or local municipal modifications. These changes shall be made within a time frame agreed to by the Department's Local Contract Coordinator - Operations and at no cost to the Department.
6. The Contractor shall ensure that the ITS provides telephone reception quality meeting all industry standards for service quality as defined by the Florida Public Service Commission ("FPSC") and by the Federal Communications Commission ("FCC"). The Contractor shall accept the Department's decision regarding determination of quality.
7. The Contractor shall ensure that all of its work and materials comply with all local, county, state and federal laws, rules, ordinances and regulations as well as with any directive provided by inspectors appointed by proper authorities having jurisdiction at each Department facility. Should violation of codes, laws, or statutes, or ordinances



occur relating to this ITS project, the Contractor shall correct the situation at no cost to the Department, including payment of any fines or penalties associated with the violation.

**C. Communications**

Contract communications will be in three (3) forms: routine, informal and formal. For the purposes of this Contract, the following definitions shall apply:

1. Routine: All normal written communications generated by either party relating to service delivery. Routine communications must be acknowledged or answered within thirty (30) calendar days of receipt.
2. Informal: Special written communications deemed necessary based upon either contract compliance or quality of service issues. Must be acknowledged or responded to within fifteen (15) calendar days of receipt.
3. Formal: Same as informal but more limited in nature and usually reserved for significant issues such as Breach of Contract, failure to provide satisfactory performance, imposition of liquidated damages, or contract termination. Formal communications shall also include requests for changes in the scope of the Contract and billing adjustments. Must be acknowledged upon receipt and responded to within seven (7) days of receipt.

The Contractor shall respond to Informal and Formal communications by facsimile or email, with follow-up by hard copy mail.

A date/numbering system shall be utilized for tracking of formal and informal communications.

The only personnel authorized to use formal contract communications are the Secretary of the Department of Corrections, and Chief of Staff, the Department's Contract Manager, and Contract Administrator, and the Contractor's CEO or Project Manager. Designees or other persons authorized to utilize formal contract communications must be agreed upon by both parties and identified in writing within ten (10) days of execution of the Contract. Notification of any subsequent changes must be provided in writing prior to issuance of any formal communication from the changed designee or authorized representative.

In addition to the personnel named under Formal Contract Communications, personnel authorized to use Informal Contract Communications are the Department's Local Contract Coordinator and the Contractor's ITS System Administrator and any comparable corporate positions on behalf of the Contractor or other persons designated in writing by the Contractor.

In addition to the Contract communications noted in Section II., C., in this Contract, if there is an urgent administrative problem the Department shall make contact with the Contractor and the Contractor shall orally respond to the Contract Manager within two (2) hours. If a non-urgent administrative problem occurs, the Department will make contact with the Contractor and the Contractor shall orally respond to the Contract Manager within forty eight (48) hours. The Contractor or Contractor's designee at each institution shall respond to inquiries from the Department by providing all information or records that the Department deems necessary to respond to inquiries, complaints or grievances from or about inmates within three (3) working days of receipt of the request.

**D. Contractor's Responsibilities**

The Contractor shall provide the following:

1. A comprehensive inmate telephone service that will allow for collect and prepaid calls for local, interlata, intralata, intrastate, interstate and international calls and local telephone exchange service;
2. A technology system, which includes, but is not limited to, system infrastructure, network, database, servers, new call processors, digital and analog communications circuits, telecommunications capabilities, monitoring, and other required system functionality;
3. Installation of new telephone instruments (equipment) at all included facilities including the required number of instruments and any required station cabling as determined necessary;
4. Systems and equipment that support the Department's call monitoring/security needs, including terminals, and digital recording equipment as determined necessary;
5. Creation of a centralized database which shall contain all data elements necessary for provision of monitoring services, reporting and historical call transaction information;
6. E-messaging capability for inmates to receive e-messages from a limited number of persons and addresses (receipt only will be accepted), with enhanced communication surveillance, screening and security;
7. Contractor personnel to include ITS System Administrator, Field Repair/Site Technicians and Service Representatives to perform oversight, operational assistance and maintenance and repair to the ITS system and equipment;
8. Ongoing maintenance, repair, and/or replacement and/or upgrades of all equipment and systems as determined necessary to ensure service delivery;
9. Provision of all required training and instructional materials required for use of the telephone services as applicable to inmates, families, and/or Department staff; and
10. Provision of all related support services not otherwise indicated herein.

**E. Facility Implementation Plan and Transition of Service**

This Contract has approximately a sixty-seven (67) day implementation period, for the initial delivery of equipment, supplies and hiring and training of Contractor staff and transition of services from Contract C1864. The Contractor shall have the capability to commence implementation of services no later than September 24, 2007, and full service delivery of inmate telephone services at all institutions, including meeting all security requirements at all institutions, no later than November 30, 2007. Upon Contract execution, the Contractor shall submit an Estimated Implementation Plan and Transition Date Schedule to the Contract Manager. The Contractor's Estimated Implementation Plan and Transition Date Schedule shall be adjusted as necessary and approved as Contractor's Final Implementation Plan and Transition Date Schedule by the Contract Manager. This plan shall be designed to provide for seamless transition with minimal interruption of telephone services to inmates.

NOTE: The implementation schedule for the E-messaging Service shall be mutually determined by the Contractor and the Contract Manager, but shall begin no sooner than approximately sixty-seven (67) days after contract execution, based on Department direction of implementation.

The Final Implementation Plan and Transition Date Schedule for Inmate Telephone Services shall provide a schedule of implementation for each institution which illustrates the date and

time for start of installation and a date certain for the system and equipment to be fully operational and providing services. The Department has chosen Jefferson Correctional Institution, Jefferson County, Florida, ("Jefferson C.I.") as the first site at which inmate telephone services shall be implemented. Thereafter, the Contractor may implement service delivery at all other institutions and facilities in accordance with dates established by the Contractor as shown in its Final Implementation Plan and Transition Date Schedule and as approved by the Department. Once accepted, the estimated plan will become the Contractor's Final Implementation Plan and Transition Date Schedule. With the exception of Jefferson C.I., the Contractor is not required to implement service delivery in any particular order. Telephone services for satellite facilities will be implemented with the main institution that is responsible for oversight of the satellite facility. Final transition including operational testing at each institution shall be coordinated between the Contractor, the current Contractor and the Department.

The Contractor's Final Implementation Plan and Transition Date Schedule shall also include a detailed explanation of the following items:

1. procedures for transition of service/equipment from the existing ITS to the new ITS;
2. times when telephone instruments will be operational identifying possible "down time";
3. service coordination requirements between the Contractor and Local Exchange Companies (LEC's);
4. any software programming and preparation for installation of system and equipment, as required; and
5. responsibilities required of the Department during implementation, such as staffing requirements.

The Department will provide personnel from the Department's Bureau of Institutional Support Services to facilitate transition of services at each institution, including coordination of equipment installation.

Once accepted by the Department, there will be no changes made to the Final Implementation Plan and Transition Date Schedule unless a request is submitted in writing and approved by the Local Contract Coordinator-Operations. To avoid any delays in phase-in, the Contractor shall ensure that the Local Contract Coordinator-Operations is timely provided information required for conducting NCIC/FCIC background checks prior to any new Contractor staff being hired or assigned to work under this Contract.

The Contractor is required to implement its own technology system to facilitate inmate telephone service. Due to the size and complexity of the anticipated system, Contractor will be allowed a period of transition beginning on the date the contract is executed, not to exceed November 30, 2007 in which to install and implement the utilization of its own technology system. Transition, implementation and installation are limited to approximately sixty-seven (67) days.

During the transition period, the Contractor shall operate its telephones in parallel with the existing telephones which the current ITS Contractor has not yet removed. The objective of the "parallel operation" is to allow inmate telephones to remain operational during normal operational hours to the greatest extent possible during the transition period. The Contractor shall be required to work closely with the Department to ensure that the transfer of responsibility for inmate telephone service at each institution is carried out as smoothly as possible. In addition, the Department will work cooperatively with the Contractor to create and

maintain an information flow in accordance with other provisions of the Contract and the parties shall utilize best efforts to resolve all issues that may or could occur from such parallel operation, including, but not limited to data sharing and agreement on a conversion schedule.

The Contractor shall assume 100% responsibility for the delivery of the agreed-upon revenue for each inmate telephone that has been installed and is operational by the agreed-upon implementation date. Failure to have the ITS operational by the agreed-upon implementation date at each institution may result in liquidated damages as set forth in Section II, R.

**F. Facilities to be Provided Services/Additions and Deletions**

The facilities to be included under this Contract include all Department currently operated institutions and allied facilities.

**Add/Delete Institutions/Facilities:** The Department reserves the right to add or delete institutions and/or facilities receiving service under the Contract upon thirty (30) days' written notice. Such additions or deletions may be accomplished by letter and do not require a contract amendment.

When a new Department facility is opened by the Department, the Department will determine (in consultation with the Contractor) a schedule for installation of services and equipment at that location to ensure service is enabled as soon as practical at the new site.

**Add /Delete Equipment:** In addition, the Department may require the Contractor to increase or decrease the amount of equipment utilized in the ITS including dedicated monitoring terminals, inmate telephones or coin telephones or e-messaging equipment (as applicable). The Contractor shall install any additional equipment within thirty (30) days of written notification to add equipment from the Department's Local Contract Coordinator-Operations. The installation of this equipment shall be at no cost to the Department. The written request for installing equipment shall be made by the Local Contract Coordinator-Operations, and shall be received by the Contractor with receipt verified before the installation is accomplished.

**G. Installation Requirements**

All required materials, equipment, hardware, software and station cabling (where re-use is unavailable or new locations are required) for installation and maintenance of the ITS shall be provided by the Contractor. Wherever possible, the Contractor shall re-use existing station cabling installed at each Department facility for the telephone instruments. In cases where existing station cabling cannot be used, the Contractor shall install new station cabling (Category 3 minimum) at no cost to the Department. Any new cabling shall include wall plate, cross connection, patch cords, etc. as required by the Department. The Contractor shall comply with all applicable electrical codes.

The Contractor shall warrant that all members of the Contractor's staff or subcontractors providing installation of the ITS have been fully trained and certified by the manufacturer as qualified to install the system, equipment and related services as required for service delivery.

The Contractor shall comply with the Department's security guidelines (Attachment 1) on institutional and facility security policies. Violations of these rules could result in termination of the Contract. Prior to beginning work at an institution, the Contractor shall

contact the institution to obtain a copy of any specific additional institutional or facility rules.

The Contractor or designee shall provide each institution or facility with the following items before entering the facilities:

1. A list of tools that the Contractor and/or designee, will bring onto the institution or facility. These tools will be inventoried upon arrival and departure.
2. Current picture identification of the Contractor and/or designee, consisting of a Driver's License or State of Florida ID card.

The Contractor shall provide all coordination required with Local Exchange Carriers ("LEC") and other carriers during installation and for the duration of the Contract.

The Contractor shall provide and install required surge protection for the ITS and its components. The use of traditional "power strips" for surge protection is not acceptable.

The Contractor shall provide and install required lightning protection equipment on all network services supplied for the ITS.

The Contractor shall provide all electrical and environmental requirements of the ITS for each Department facility. Information shall be provided for all components of the ITS including central processor, recording equipment, etc.

The Contractor shall use the common ground facility at each location where the ITS equipment is installed, if a common ground facility is present. If not present, the Contractor shall install an earth ground for the ITS equipment.

The Contractor shall obtain written permission from the Contract Manager before proceeding with any work that requires cutting into or through girders, beams, concrete or tile floors, partitions or ceilings, or any work that may impair fireproofing or moisture proofing, or potentially cause any structural damage. The Department does not anticipate that such work will be required to install the desired service, systems and equipment as described herein, but will not warrant that such work may not be required at some locations.

#### **H. Inmate Telephone System Functionality (General)**

The Contractor shall provide an Inmate Telephone Service (ITS) with a technology system fully supported by an infrastructure which has the capability to provide specified services such as secure and real-time monitoring of telephone calls meeting the Department's system security requirements. In addition, the system shall contain a secure database for transactional call records and provide data feeds to the Department's official data repository. This shall include redundant system(s) as deemed necessary to accomplish this requirement and a continuity of operations plan and disaster recovery plan which will ensure that the system and services will be available without disruption at the required service level.

The inmate telephone system shall contain security features, which prevent unauthorized individuals from accessing any information held by the Contractor. Secure access to the system and the database shall be maintained at all times.

The Contractor shall provide complete support of all systems and software necessary to ensure provision of services at all times for the duration of the resulting Contract. In

addition, the Contractor shall monitor changes to associated interfaced systems and accommodate changes in their systems as needed to continue operations of the services and systems as specified herein.

All technical specifications and system requirements shall meet or exceed industry standards and, shall be in proper working order, clean and free from defects of features affecting appearance, serviceability, or the safety of the authorized user in normal intended use, unless otherwise required herein. The Contractor shall provide the Local Contract Coordinator – Operations with documentation of the standards (i.e., Bellcore, ANSI, etc.) to which its system will adhere.

The system shall be restricted to outgoing calls only. The system shall not process incoming calls at any time. The system shall allow for the Department to program times when the system will be operational, i.e., available or unavailable for inmate calls.

The system shall contain an automated announcement function capable of processing calls on a selective bi-lingual basis: English and Spanish. The inmate shall be able to select the preferred language using no more than a two-digit code.

During the call set-up process, the system shall provide a pre-recorded announcement, which complies with Code of Federal Regulations, Title 47, Volume 3, Part 710 (3)(ii), identifying that the collect call is coming from a specific inmate at a Florida Correctional Institution, stating rate and complaint information and containing a toll free number for the consumer's use. This announcement shall be heard by the answering party. The announcement shall also include the statement: "All telephone calls will be recorded except attorney calls."

The system shall have the capability to be deactivated (shut down), by Department or Contractor staff, quickly and selectively, at an individual facility, partial facility (single dorm) or on a global basis and to restrict all PIN access. The system shall be capable of deactivating the PIN feature by individual inmate telephone, groups of telephones and/or entire institutions, at the Department's option. Regardless of this deactivation, the system shall restrict inmate calls to prepaid collect and normal collect calls. At no time shall the inmate telephones be unrestricted due to the deactivation of the PIN feature.

The system shall provide the capability to flag any individual telephone number in the inmate's "Approved Number List" as "Do Not Record". The default setting for each telephone number will be to record until flagged by Department personnel to the contrary.

The system shall provide capability for assigning an inmate's phone access to an individual telephone or group of telephones so that the inmate's account may only place calls from those designated telephones. These telephones shall still be capable of being used by an inmate whose phone access is not specifically assigned to an individual phone.

The Contractor shall ensure the system has a "smart fail-safe" power down service which is initiated upon alert by the uninterruptible power supply (UPS) that the UPS has switched to battery power because of a commercial mains power failure or irregularity. The system and UPS shall maintain all currently ongoing telephone calls for up to ten (10) minutes while blocking any additional call attempts after the event. After ten (10) minutes, if the UPS has not alerted the system that commercial power has been restored, the system shall power down to a quiescent state that allows it to resume full operation automatically after commercial power is restored. After power restoration, the system shall have a timer to

delay for ten (10) minutes before call processing resumes to preclude unnecessary cycling if the commercial power is unstable.

In order to prevent a state-wide or region-wide system failure, there shall be control equipment at each major institution, with the exception of Gainesville CI.

1. Network and Infrastructure Requirements

The Contractor shall provide a system that includes a monitoring component that is capable of being accessed through dedicated monitoring terminals and through a vendor-provided secure Internet connection from desktop, laptop or remote means by authorized Department personnel who have appropriate security clearance and have been provided Contractor-supplied security codes. The system shall be capable of monitoring calls from both dedicated monitoring terminals AND via secure, password protected internet access.

In addition, the telephone system shall interface with network services provided by local exchange carriers as well as inter-exchange carriers. This includes analog and digital facilities (i.e., analog business trunk, DS-1, etc.). The Contractor's response to the ITN provides the types of network services to which the system will interface and the purpose (use of a specific application) of such services for the Department.

2. Software Requirements

The Contractor shall provide all software required to support the inmate telephone system. During the entire contract term, including any renewals, the software shall be the latest general release of the software including software for all equipment and monitoring terminals utilized in service delivery. Any software necessary for Department interface shall be provided at the expense of the Contractor, with no licensing fee to the Department.

All software must be compatible with a minimum of a Windows XP operating system and must operate with Internet Explorer version 5.5, at a minimum.

The Contractor shall provide all required software enhancements/upgrades to the system inclusive of service delivery. Beta and Field Tested Software shall not be provided unless specifically approved by the Department. Prior to any software upgrades or enhancements, the Contractor shall discuss the software benefits with the Department's Contract Manager and the Office of Information Technology and proceed only with written approval.

3. Database Requirements

The Contractor shall provide a data record of all transactions through the inmate telephone system that shall be maintained in a database for monitoring and analysis of inmate telephone calls. This data is used to alert authorized Department staff of possible trends with inmate calls that could jeopardize the security of inmates, staff, or facilities.

The Contractor shall be responsible for the generation and creation of a centralized system database. The system shall provide the capability for every call in and out of the system to be recorded with a transaction record that includes, at a minimum, a

recording of the telephone call in a .wav or other format acceptable to the Department.

The database shall be maintained in such a manner as to allow authorized personnel the capability to review and monitor inmate call data regardless of which Department facility is housing the inmate.

The database shall contain multiple data fields. At a minimum, the database shall contain all fields required to generate reports as indicated in Section II., M., and all information required to establish Inmate Phone Access as indicated in Section II, I., 2. Final data elements to be collected shall be subject to written approval by the Department.

The system shall provide the capability for the Department to download reports from the database, through secured internet access, as outlined in Section II., M., Reporting Requirements.

In addition, the Contractor shall provide access to the database through a secure "ftp" web server so the department can retrieve certain data on a daily basis. The Contractor shall provide certain data elements in a pipe delimited format, to be determined by the Department's Office of Information Technology. Data extracts shall be downloadable into a SQL Server database hosted by the Department of Corrections in such a manner as to allow the Department to perform further analysis on the system data.

The security and confidentiality of data in the system is of critical importance. The Contractor shall recover all inmate telephone data for all locations, to the point of full service operation, using a data backup. The Contractor shall perform all service and database back-ups and archiving. The Contractor shall provide all archival hardware, supplies, network and recovery procedures that will ensure that no data is lost.

The database shall have duplicate data storage devices with automated fail-over and automatic re-establishment of the duplicate databases upon replacement of the failed storage device and shall be equipped with automated fire detection and suppression equipment.

The system shall record all data with a historical transaction record and data shall be stored/archived for retrieval/backup in a database when requested by Department personnel in accordance with the following:

- a. All historical data shall be centrally stored and accessible for reporting purposes;
- b. This information must be available for reporting in a standard transaction file format;
- c. All current and historical data files shall be retained by the Contractor as specified for a period of five (5) years after contract expiration. Call records detail and call recordings shall be available "on-line" for a minimum of twelve (12) months from the date of the call and call records detail shall be available "off-line" for an additional forty-eight (48) months, or a total of sixty (60) months from the date of the call. "Off-line" records shall be in a format readily accessible to the Department upon request; and



- d. This information shall be available at no charge to the Department after termination of the contract.

All data shall remain the property of the Department and the Contractor shall not use data for any purpose other than as required in the contract without written permission of the Local Contract Coordinator - Operations

4. System Calling Protocol Requirements

The Contractor shall ensure the system will only initiate calls in a "collect call" mode (prepaid or normal collect calls) to land lines (non-cellular) with Billing Number Addresses (BNA's) for all inmate telephone calls. The only exception to this requirement will be for calls placed on coin-operated telephones at identified Work Release Centers. Phone calls placed from those phones may be allowed to call cellular phone numbers.

Calls shall be processed at a speed of fifteen (15) to thirty (30) seconds or faster and "call set-up time" shall not exceed six (6) seconds from completion of dialing to first ring. The system shall not provide a second dial tone to an inmate telephone without the inmate hanging-up the telephone receiver after the first call is completed.

Each call placed through the system shall be electronically identified by the system as being a call originating from a Florida Correctional Institution in 100% of the cases with or without the accompanying inmate PIN.

The system shall provide the option of either English or Spanish voice messages or prompts as programmed through a single prompt at the beginning of each call. The default setting for each inmate shall be English until flagged by Department personnel to Spanish. It is desirable that the system provide standard language prompts other than English and Spanish. The language provided shall be controlled by the inmate's account information. The Contractor shall provide a list of languages available to the Local Contract Coordinator - Operations upon request.

The system shall provide automated notification to an inmate of the call status (i.e., ringing, busy, etc). This notification may either be in the form of ringing, busy tones, Special Information Tone (SIT), or appropriate recorded messages.

The system shall allow the inmate to hear the processing of the placed call to determine if a SIT with message or an answering device (i.e., answering machine, voice mail, etc.) has answered the call. At no time shall the system allow the inmate to speak (restricted voice channel) until the called party has accepted the call.

The system shall announce to the called party the name of the calling inmate, informing the called party how to accept calls and announcing to the called party the call charge rate, prior to acceptance, when a call is placed. The activation or deactivation of these features shall be determined by the Department.

If the party called does not accept a call, or if no one answers the call, the system shall inform the inmate of the situation and not simply disconnect the call.

The system shall allow for a minimum “ring time” prior to disconnecting the inmate call. This “ring time” parameter shall be established within set parameters determined by the Department and shall be consistent among Department facilities.

The system shall allow a called party to deny all future calls of a particular type from an inmate and shall provide notice to the inmate placing the call of such action.

The system shall accept the called party’s response via Dual Tone Multi Frequency (DTMF) Touch-Tone Pad input from the telephone and voice response (Yes/No Response).

The system shall interject messages into a telephone call at random intervals (i.e., “this call is from a Florida Correctional Institution”) as deemed necessary by the Department. The activation or deactivation of this feature shall be determined by the Department.

The system shall allow a called party to activate a code (via the touch tone pad of their telephone) that automatically deletes their telephone number from the calling inmate’s “Authorized Telephone Number List”.

The system shall also provide an alert or notification to authorized Department personnel to ensure that the inmate does not add any number deleted via the above indicated feature to his/her requested list of telephone numbers in the future. Notification or alert to the Department shall be via automated system update to the inmate’s account information file.

5. System Voice Quality Requirements

The ITS shall provide quality of voice connections that meet or exceed appropriate industry standards in the United States and standards enacted by appropriate industry agencies or other organizations for transmitted and received levels, noise, cross talk and frequency range(s). The Contractor shall provide the Local Contract Coordinator - Operations with documentation of the standards (i.e., Bellcore, ANSI, etc.) to which its system adheres.

The voice quality level referenced above shall be in place for all telephone services at all stages of a call and shall not be affected by any other system feature, function or capability.

6. System Call Blocking Requirements

The ITS shall have call block capability and shall be responsible for ensuring that the system is programmed for call blocking.

Call blocking requirements shall apply to all inmate telephone equipment unless otherwise specified, and shall include, but not be limited to, the following types of calls:

- a. calls made to business numbers identified during the billing number address (BNA) search.
- b. calls made to any 911 number;

- c. calls made to any telephone numbers which incur excess charges, such as 900, 972, 976, 550, etc.;
- d. calls to current long distance carrier access numbers (i.e., 10333, 10285) or future 101-XXXX carrier access numbers;
- e. calls for all local numbers which access long distance carriers (i.e., 950-XXXX);
- f. call access to directory assistance access numbers (i.e., 411, 555-1212, etc.);
- g. call access to toll free numbers (i.e., 800, 888, 877, etc.) except the Florida Relay Service toll-free number(s), so that hearing impaired inmates may access a "Telephone Devices for the Deaf" (TDD) service; and
- h. call access to any number upon request by the Department.

Only the following call blocking requirements shall apply to the coin-operated telephone equipment located at the Department's work release centers:

- i. calls made to any 911 number;
- j. calls made to any telephone numbers which incur excess charges, such as 900, 972, 976, 550, etc.;
- k. call access to toll free numbers (i.e., 800, 888, 877, etc.) except the Florida Relay Service toll-free number(s), so that hearing impaired inmates may access a "Telephone Devices for the Deaf" (TDD) service; and
- l. call access to any number upon request by the Department.

Call blocking shall not apply to coin-operated phones for visitors or the public at-large.

**7. System Monitoring, Call Recording and Playback History Requirements**

As set forth in Section II., H., 1., the inmate telephone system shall include a monitoring component that is capable of being accessed from a vendor-provided dedicated monitoring terminal and through a vendor-provided secure Internet connection from desktop, laptop or remote means by authorized Department personnel who have appropriate security clearance and have been provided Contractor-supplied security codes. The ITS shall monitor calls from both dedicated monitoring terminals AND via secure, password protected internet access.

The system shall allow for "real time" audible monitoring of inmate calls by specific inmate PIN number and/or terminating number entered by authorized Department personnel. The system shall allow for monitoring of inmate calls while in process ("real time") and shall be configurable to allow for auto-forwarding specified calls in a "listen only" mode to a pre-designated telephone number in the Inspector General's (IG) Office.

The system shall have query and search capabilities allowing Department investigators to quickly access telephone conversations that occurred during specific time periods, and/or were made from specific telephone instrument locations, etc.

The system shall record all inmate calls simultaneously and at any time (in "real time") that a call is placed.

The call recording functionality shall be a fully digitalized service allowing for the use of a compact disc recorder (CD burner) utilizing industry standard recording file formats.

The system shall create a record of all calls that are monitored by any Department employee. This record will display an indicator, visible in that call entry that is in the list of inmate calls, which will indicate if that call has been played back by anyone. This indicator, which can be as simple as an icon that is activated when the call has been played back, will link to the detailed playback history of the call. The detailed playback history will list each date and time that the call was played back and the identity of the person who accessed the call.

This playback history shall only be visible to personnel from the Office of the Inspector General and access to this feature shall only be granted by the appropriate approving authority in the Inspector General's office. Non-Inspector General personnel shall not have the ability to view or retrieve any call playback history information.

**8. System Restriction, Fraud Control and Notification Requirements**

The security and confidentiality of inmate-placed telephone calls is of critical importance. ITS security features which prevent unauthorized individuals from accessing any information held by the Contractor will provide for restriction to the system, fraud control for prevention purposes, and notification capabilities for attempted security violations or breaches. Secure access to the system shall be maintained at all times. The ITS shall have security capabilities that include, but are not limited to, the following:

- a. Fraud prevention features, which randomly interject pre-recorded announcements throughout the duration of the conversation to the called party indicating the source of the call.
- b. Detection and prevention capabilities related to fraudulent, illicit or unauthorized activity capable of detecting unusual or suspicious number sequences dialed or dialing patterns which the system identifies as possible attempts to commit fraud.
- c. A call alert feature. This feature shall alert Department personnel that a designated inmate is placing a call to a specific number that has been assigned alert status. This status is an investigative tool which will be activated by authorized Department personnel.
- d. Ability to detect an attempt by the called party to initiate a 3-way or conference call, to immediately terminate the call and to make a "notation" in the database on the inmate's call with immediate notification by e-mail to the Assistant Warden for Programs and the Inspector General's Office at that institution.
- e. Ability to immediately terminate a call if it detects that a called party's telephone number is call forwarded to another telephone number. The system shall make a "notation" in the database on the inmate's call and shall provide immediate notification of the attempt by e-mail to the Assistant Warden for Programs and the Inspector General's Office at that institution.
- f. Ability to deactivate the restrictions on the called party's attempt to initiate a 3-way or conference call on a per number dialed, per inmate basis. The system

shall permit call transfer or 3-way conferencing of specific inmate calls placed to pre-designated privileged telephone numbers such as attorneys.

- g. Ability during any call to block the out-pulsing of all digits pressed by the inmate and all hook switch "flash" attempts, after the PIN and calling list number have been input, such that no dual tone multi-frequency (DTMF) or hook switch "flashes" will appear on the outside line.
- h. Capability for the Department to immediately and remotely turn telephones on and off, including individual telephones, groups of telephones, or an entire Department facility by Department staff with the appropriate authorization level. This service shall be available, via telephone, 24/7.
- i. Ability to provide a form of speech or word recognition that will alert Department personnel when certain words or phrases are used by an inmate during an outgoing call.

9. System Access Management Component

The system shall provide for authorized user access for the purposes of managing inmate phone access information in real time. Authorized Department staff and Contractor staff, as authorized by the Local Contract Coordinator - Operations and/or the Inspector General's Office, shall have the ability to immediately enter, delete, change, or modify any inmate phone system access information including, but not limited to calling privileges or restrictions pertaining to inmates.

The system shall allow for authorized Department user access to be established upon application by the prospective user and the approval of the concerned warden or assistant warden, and a designated representative from the Inspector General's Office, Central Office. This approval authorization shall be given only to the incumbent in these positions and cannot be delegated or assigned. Levels of authorized access shall be a menu-driven selection configured for each user, listing the various components of the system. Any modifications to access levels shall go through the same approval process as above.

Deactivation of user accounts may be approved by any one of the above-cited approving authorities individually, with an electronic notice sent to the designated Inspector General's Office representative.

The creation, approval, and modification of user accounts shall be available in both electronic and paper format. Accounts opened manually (with paper application) shall be processed into the electronic user account system by the ITS Contractor.

The system shall allow the creation of lists of currently authorized users by facility and/or IG Office as needed. A system-wide list of all current authorized users shall be provided to the Inspector General's Office, Central Office, quarterly. The system shall also maintain a list of all users, active or inactive, searchable by the user's last name, first name, and containing all periods of account activation.

The system shall allow Department personnel to temporarily restrict or disconnect service to an individual inmate telephone or station.

10. System Network Status Monitoring Component

The ITS shall provide a system network status monitoring component. The system status monitoring component shall, at a minimum:

- a. Show graphically in real-time the status of the system components at each Department facility and other locations, to include but not be limited to, call processor equipment, call monitoring equipment, call recording equipment, telephone station equipment, and network circuit connections.
- b. Show component status in a minimum of two conditions: "Green" for normal operation, and "Red" for failed or failing operation.
- c. Provide automatic reporting of component status changes (not manual input).
- d. Display and record event times, i.e., when any component changes status from "Red" to "Green", or vice-versa.
- e. Provide the service technicians the ability to log acknowledgments of component failures, log acceptance of responsibility for repair, and log comments on action taken.
- f. Provide the Contractor's ITS System Administrator accessibility to the display of status at all times. The status display shall be available at other locations such as the Contract Manager's office, via intranet computer access. Department personnel shall be allowed to observe the system status display at any time upon demand. All event records and technician logs shall be maintained for a minimum of thirty (30) days and shall be available to authorized Department personnel upon request.

11. System Testing

Upon contract execution, the Contractor shall provide a complete and comprehensive functional test plan to assure the Department of the system's readiness to accept inmate calling traffic. This test plan shall include a checklist of items to be performed by the Contractor's implementation team and verified by the Department's staff.

12. System Acceptance

The Contractor shall provide a complete and comprehensive acceptance plan for the system at each Department facility. System acceptance shall be determined by a consecutive thirty (30) day period during which the system must function "error free" after installation. The Contractor shall work with the Department to determine the actual definition of "error free" operation. Failure of the system to meet mutually agreed upon acceptance criteria for more than thirty (30) consecutive days may result in a request for replacement by the Department for that particular system component.

13. System Documentation

At the completion of the implementation/installation, the Contractor shall provide to each Department facility, the Contract Manager, and the Local Contract Coordinator-Operations, a complete set of service reference manuals that shall include information specific to the installation at the respective facility.

In addition, after installation at each respective institution, the Contractor shall supply documentation containing service request contact numbers, instructions on reporting and escalation procedures to the Local Contract Coordinator - Operations and Assistant Warden for Programs at the respective institution.

14. System Disaster Recovery

The Contractor shall have a written Disaster Recovery Plan and Continuity of Operations Plan and associated internal system equipment that shall be capable of providing for support in case of failures in power, telephone system, data networking, and Contractor's equipment at its host site through the user-level equipment provided by the Contractor, and for all natural or man-made disasters including flood or fire at the host facility. These plans and all updates will be reviewed and accepted by the Department and kept for reference purposes by the Department's Local Contract Coordinator - Operations, Office of Institutions, and Office of Information Technology.

The system shall be capable of recovering from a power outage automatically or remotely once commercial power is restored.

15. System Technical Assistance/Contractor Customer Service Center

The Contractor shall provide remote diagnostic support and trouble-shooting technical assistance for system and equipment twenty-four (24) hours a day, seven (7) days a week, including holidays.

The Contractor shall provide the authorized users a toll free contact number, answered, twenty-four (24) hours a day, seven (7) days a week for the purpose of reporting problems that might be experienced.

In addition, the Contractor shall provide a centralized Customer Service Center located in the Continental United States (preferably within the State of Florida) which is operational twenty-four (24) hours a day, seven (7) days a week, including holidays for the purposes of handling customer complaints regarding the inmate telephone system and billing processes. The customer service center shall provide a P01 Grade of Service on incoming calls.

The Contractor shall also ensure that a minimum of two Service Representatives, as delineated in Section II., N., are provided specifically for staffing the Central Office location. The responsibilities of these individuals will include handling of inmate family complaints as well as the additional duties specified for Field Service Representatives in Section II., N.

I. Other Inmate Telephone Service Requirements

1. Personal Identification Numbers (PINs)

The ITS shall be Personal Identification Number (PIN) driven. The ITS shall restrict use of the service through authorized PINs assigned to each inmate at one of the Department's five (5) reception centers. No PINs will be issued by any institution. This PIN service shall allow individual PINs to be shut-off upon request of staff at the facility. When an inmate transfers to a different institution, that

inmate's PIN account shall also be transferred. All PIN information shall remain the property of the State of Florida.

The ITS shall use the Department's current inmate PIN assignments and numbering plan. Current PINs are numeric only and eleven (11) digits in length. The ITS's PIN service will consist of the inmate's DC number, and shall be followed by the last 4 numbers of the inmate's Social Security Number. Since the DC number is usually 6 characters and the first character can be a letter or digit, it is necessary to use 7 digits to represent the DC number. Therefore, the PIN shall be constructed as follows:

1ST TWO CHARACTERS OF THE PIN:

<b>If the DC number begins with:</b>	<b>Then the PIN begins with:</b>
Blank* or Zero	00
1 through 9	01 through 09
A through J	10 through 19
K through T	20 through 29
U through Z	30 through 35

Note: Some older DC numbers may be written as only 5 characters. In those cases, the DC number is assumed to start with a blank to make it a 6-character number.

NEXT FIVE CHARACTERS OF THE PIN:

Same as the last five characters of the inmate's DC number.

LAST FOUR CHARACTERS OF THE PIN:

Same as the last four characters of the inmate's Social Security Number (SSN).

EXAMPLES:

A: DC number is 872460  
SSN is 222-10-3555  
PIN is 08724603555

B: DC number is A98811  
SSN is 393-44-1167  
PIN is 10988111167

C DC number is 12298 (some older DC numbers are only five characters)  
SSN is 998-30-2345  
PIN is 00122982345

The ITS shall utilize the PIN feature for any call mode, either prepaid or normal collect calls.

The ITS shall allow each PIN to have a "class of service" assigned. For example, each PIN shall have a list of allowable telephone numbers, duration of each call, etc.



The ITS shall provide call restrictions by PIN that provide the Department the option of implementing any or all of the following restrictions by PIN designation:

- a. Inmates can be either approved or not approved to make telephone calls by PIN, at the Department's option;
- b. Inmates, via the PIN, can be restricted to a specific telephone or group of telephones, at the Department's option;
- c. Limit duration of call: Maximum call duration can be set globally (all PINs), by site, by facility area or by individual inmate's PIN, at the Department's option;
- d. Maximum call duration can be set for each type of call: local, intralata, interlata, interstate, intrastate and international;
- e. Restrict time of day calling: An allowed calling schedule can be provided for each specific PIN, by facility area, by site and globally (all PINs). The global restrictions can take precedence over individual PIN restrictions, at the Department's option.
- f. Restrict an inmate under disciplinary action from placing any or all calls assigned to his particular PIN with the exception of privileged numbers (i.e., attorney, approved clergy and social work professionals).

The ITS shall have the ability to limit calls to a specific duration by PIN and by specific telephone numbers assigned to a PIN.

The PIN feature shall ensure that the automated operator function uses the inmate's pre-recorded name (recorded in either the inmate's voice and language, or in the voice of an administrator) to announce to the called party from whom the call is originating. Identification of the specific inmate and thus the announcement of the inmate's name shall be performed by the PIN assignment.

The system shall allow for approved destination telephone numbers to be assigned and restricted by individual PIN. Such telephone number lists will be approved and entered by authorized Department personnel, the Contractor's ITS System Administrator or the respective Service Representative at the Department's option.

It is the intent of the Department to allow each inmate, via the use of PINs, a list of authorized telephone numbers not to exceed a maximum total of ten (10) numbers not including privileged telephone numbers.

The PIN feature shall allow the recording of inmate calls to be discontinued when certain pre-determined telephone numbers (privileged telephone numbers) are called.

## **2. Inmate Phone Access Information/Approved Number List**

The Contractor shall provide Service Representatives for entering Inmate Phone Access Information in the Inmate Telephone System. Service Representatives shall make, at a minimum, twice weekly visits to the facilities, or as deemed necessary by

the Department, for the purposes of entering and updating Inmate Phone Access Information. In addition, the Contractor shall ensure that information can be entered into the system by authorized Department personnel. Inmate Phone Access information fields shall include, but not be limited to, inmate name (first, middle, last), PIN number (11 digits minimum), Department facility, identifier of unit within Department facility, ten (10) approved telephone numbers by terminating number, privileged numbers; comments field, language preference field, account activation date, date of arrival, current status, alert levels, etc.

Authorized Department personnel shall have the capability to enter, modify, and delete the information in any data field encompassing any inmate's phone access information including an inmate's "Approved Number List".

The Department will make available to the Contractor, the current ITS Inmate Phone Access Information, as necessary for the transition of services.

3. Rate and Call Charge Requirements

Local and local extended area service calls shall be billed as local calls.

Charges for calls shall include only the time from the point at which the called party accepts the call and shall end when either party returns to an on-hook condition or until either party attempts a hook flash. There shall be no charges to the called party for any setup time.

In addition, the Contractor shall not charge, pass on, or pass through to the customer paying for collect or prepaid calls any charges referred to as Local Exchange Carrier's (LEC's) or Competitive Local Exchange Carrier's (CLEC's) billing costs, or any bill rendering fee or billing recovery fee. The Contractor shall also ensure that LEC's and CLEC's do not charge or pass on to the customer any additional fee or surcharges for billing. The Contractor shall be responsible for any such LEC or CLEC surcharges incurred if billing through the LEC or CLEC.

4. Call Requirements

The Contractor shall ensure that prepaid and collect calling is available for all locations within the North American Dialing Plan. In addition, the Contractor shall provide a list of all countries (outside of the United States) that can be reached via the ITS operating in a "collect call only" mode.

At no time shall an inmate be automatically connected to a "live" operator. The only exception to this requirement is that international collect calls through a live operator will be allowed when the country being called accepts collect calls.

Call acceptance by the called party shall be accomplished through caller confirmation ("positive acceptance").

Collect or prepaid calls shall not be connected nor shall billing commence until the called party indicates acceptance of the call.

The Contractor shall ensure that non-prepaid calls (collect calls) are billed to the Billing Number Address as preferred by the customer (inmate family or friend) either directly the Contractor or through the LEC.

The Contractor shall be responsible for billing called parties who receive non-prepaid collect calls and for the collection of payments for these calls. In no event shall the Department be responsible for costs or fees related to ITS calls.

The Contractor shall provide a toll free number which will be clearly shown on the called party's bill for assistance in billing matters.

The Contractor shall ensure Caller ID is not available for any call placed through the ITS, and that the called party has no means of identifying the number from which a call is placed.

The Contractor shall not charge for calls that result in Special Information Tones (SIT), "ring/no answer", or "busy" conditions.

The Contractor shall provide local exchange service for collect or prepaid only calling use at each Department institution. The local calling area shall be equivalent to the local calling public pay telephone area at each Department institution. The Contractor shall ensure that the ITS is capable of identifying a dialed number as local, based on the pay telephone calling area, and of correctly rating and routing the call.

**5. Prepaid Collect Call Service (PPCCS)**

The Contractor shall allow families and friends to establish a PPCCS account(s) with the Contractor for billing purposes so that inmates can call pre-authorized numbers that may not be accessible via normal collect calling. Each prepaid account shall have an authorized billing number. Any calls billed to a family or friend's prepaid account shall meet the same security requirements as set forth for normal collect calls.

The Contractor shall ensure that notice of the prepaid account availability is provided when a party receives a call and shall offer the option of being connected to a live operator for the purpose of establishing a prepaid account, if a normal collect call cannot be completed by the inmate due to billing issues.

The Contractor's PPCCS shall allow the called party (family and friends) to deposit money into a PPCCS account by multiple means (i.e. check, money order, and/or credit card).

The Contractor shall provide instructional brochures explaining the process for establishing prepaid collect services for family and friends' prepaid accounts.

**6. Prison TIPS Hotline**

The Contractor shall create a component within the ITS that creates an inmate "hot line" accessible from any telephone instrument within the system. This component shall be fully available from the monitoring terminals located at the Inspector General's Central Office location and any of the other designated Inspector General's monitoring

stations, as may be required and authorized by the Inspector General's Office, Central Office.

The Prison TIPS Hotline must be reachable by entering \*TIPS (\*8477) on any telephone instrument in the ITS. This call shall not require input of the inmate's PIN number for access.

There shall also be a toll-free number assigned so that the Prison TIPS Hotline can be reached by any and all telephones outside of the ITS.

This subsystem shall allow the inmate to create a confidential "mailbox", not requiring the inmate to identify himself in any manner, which also allows IG personnel to leave a return message for the inmate. The creation of this "mailbox" shall be an option offered to the calling inmate, and not required by the subsystem.

The Contractor shall provide easily readable signage referencing the Prison TIPS Hotline and toll-free number for display within the institution and on the grounds of the institution as directed by the Local Contract Coordinator - Operations.

7. Crimestoppers Hotline

The Contractor shall provide a Crimestoppers hotline for anonymous reporting of cold case information that will be reachable by entering \*8488.

8. Litigation-Related Testimony

The Contractor acknowledges and agrees that many times, the recorded telephone conversations of inmates are used as evidence in criminal or Department violation investigations and as such, the Contractor may receive written/verbal requests to provide testimony regarding monitoring equipment, system specifications, and the accuracy and reliability of the system's recorded telephone data.

The Contractor shall ensure that qualified personnel is available to provide such expert testimony and that personnel responds timely and/or appears as stipulated in the request and/or legal subpoena. The contractor shall immediately notify the Local Contract Coordinator - Operations or Designee upon receipt of Departmental-related subpoenas.

J. E-Messaging Services

The Contractor shall provide an e-messaging service in accordance with the following requirements:

The Contractor shall provide an independent system to provide e-messaging service capability to the Department. The system shall provide the capability for friends and family of inmates to e-message (one-way only) authorized inmates within the correctional system.

The Contractor shall enable family/friends of inmates to set up monthly accounts based on a fixed fee/flat rate for a specified number of e-messages per month and may allow for the monthly charge to be either prepaid or billable to the account holder by the Contractor. The e-messaging account holder will be responsible for the monthly cost of the service that

allows them to send e-messages, regardless of whether the e-mail is received by the recipient or not.

There shall be no additional fees, surcharges, or other types of costs associated with e-messaging service billed to account holders inmates other than the monthly account charge.

The Department will not be responsible for any costs associated with e-messaging.

The Contractor should ensure any individual desiring to send an e-message to an inmate provides sufficient identifying information (i.e., name, billing address, etc.) that will allow for follow up contact to the e-messaging account holder should it become necessary for security purposes.

E-messages shall be delivered for printing to a dedicated terminal at each of the Department's facilities.

The e-messaging system shall allow for text messaging only (no photos or graphics) and the Contractor shall provide storage capacity for all transaction records. The e-messaging service shall have robust system intelligence capabilities, including but not limited to, automatic digital recording and cataloging of all messages, access for the Department to all such messages, parameters for automatically notifying the Department of certain communications, and automatic screening of certain words and phrases.

All equipment, including dedicated lines and/or internet connection, computers, terminals, printers, toner and paper required to provide the e-messaging service shall be the responsibility of the Contractor. The Department shall determine the amount of equipment required to handle workload and the Contractor shall agree to increase the amount of equipment, if necessary, to fully deliver the e-messaging service.

Prior to implementation of any e-messaging service, the Contractor shall work with the Department in establishing guidelines for e-messaging. All decisions regarding receipt of e-messaging will be at the sole discretion of the Department.

NOTE: The implementation schedule for the E-messaging Service shall be mutually determined by the Contractor and the Department, but shall begin no sooner than approximately sixty-seven (67) days after contract execution, based on Department direction of implementation.

**K. Telephone Service Equipment Requirements**

Throughout the term of the Contract, the Contractor shall own all systems and equipment (Monitoring/Recording Terminals, Inmate Telephone Stations, TDD/TTY devices, Coin-Operated Telephone Stations, etc.) and shall conduct all maintenance, repairs, upgrades and replacement to systems and equipment at no cost to the Department.

The number and facility location of equipment currently required to be installed at Department facilities. The number of required inmate telephone stations, coin operated telephones TDD/TTY devices and monitoring/recording stations may be increased or decreased during the term of the Contract upon the request of the Department's Contract Manager or Local Contract Coordinator-Operations, at no additional cost to the Department. All decisions on number, placement, location, etc. regarding the inmate telephone stations, coin operated telephones and monitoring/recording terminals shall be made by the Contract Manager.

NOTE: The Contractor shall work with the Local Contract Coordinator-Operations to establish the number and types of equipment prior to installation.

1. Inmate Telephone Station Equipment (“ITSE”)

All ITSE required for service delivery shall be new and consist of three (3) types of telephones:

Type 1, which will be the majority of inmate telephones installed, shall be permanently mounted wall telephones meeting the specifications outlined in this Contract.

Type 2 shall be portable or “movable” cordless inmate telephones that are used mainly in segregation units and shall be manufactured to withstand abuse as well as be compact enough to fit through standard food slots.

Type 3 shall be “all weather” inmate telephone sets to be used in outdoor conditions.

All ITSE shall have the physical and design characteristics that meet or exceed, all of the following technical standards:

- a. A chrome-plated DTMF tone dial that is water, flame and shock resistant.
- b. A hearing aid compatible handset.
- c. A steel housing that protects the electronic components of the telephone.
- d. A paint/finish that is mar and scratch resistant.
- e. A faceplate with concise dialing and operating instructions.
- f. An industry standard design.
- g. A tamper-proof housing.
- h. A floating case hardened metal plate to prevent side drilling entry.
- i. Dialing Instructions and “This Call is Being Recorded” warning statements in English and Spanish on each telephone instrument in a manner that reduces the possibility of the notice being destroyed. Labels or other accessible surface instructions will not be acceptable to meet this requirement. This information must be kept legible and accurate throughout the duration of the Contract.
- j. A unique number, physically imprinted on each telephone instrument so that Department staff can see the number for the purposes of reporting trouble and troubleshooting problems. As telephone instruments necessitate replacement, they shall be numbered by the Contractor. As new telephone instruments are added or replaced, they shall be identified in the same manner and all appropriate paper work shall be updated to reflect the addition.
- k. An armored handset cord that is resistant to stretching and breaking (for Types 1 & 3 only).
- l. Installation reinforced by security studs to prevent easy removal of telephone (for Types 1 & 3 only).
- m. A handset cord component of the ITSE with the lanyard used to connect the handset to the base telephone. The lanyard shall be no more than 32 inches in length and shall be of steel braided or solid steel composition (for Types 1 & 3 only).

The ITSE shall not include coin entry slots or coin return slots regardless of whether these functions are disabled on the station equipment (standard pay telephone requirements excluded).

All ITSE shall meet or exceed the following capabilities:

- n. True dual-tone multifrequency (DTMF) compatibility.
- o. The ITSE shall not be capable of being used to program any feature of the ITS.
- p. The ITSE shall not be programmable for any purpose.
- q. Reduction of background noise through the use of confidencers or directional microphones in the handset.
- r. Volume controls that allow inmates to amplify the called party's voice.
- s. Powered by the telephone line and requiring no additional power source, with the exception of cordless telephones as described above.
- t. Compatible with Telecommunications for The Deaf (TDD/TTY) equipment.

All ITSE shall be capable of being Americans with Disabilities Act (ADA) compliant. Twenty-five percent (25%) of all phones shall have volume control capability. Due to security concerns, the Department shall require the Contractor to modify certain features on telephone instruments such as cord length and mounting height.

## **2. TDD/TTY Equipment**

New TDD/TTY equipment shall be provided for inmate use at road prisons and work release centers (community correction centers).

All TDD/TTY equipment will be protected and secured by the Department when not in use.

Minimum requirements for TDD/TTY equipment shall include:

- a. Portability, such that it can be used with any ITS station set at the Department institution.
- b. The ability for keyboard entry.
- c. A display (i.e., LCD, LED, etc.) and a printer device.

## **3. Coin-Operated Telephone Equipment**

New coin-operated telephones shall be provided for inmate use at work release centers (community correction centers). In addition, one coin-operated telephone shall be provided for public use at each main correctional institution and annex, typically outside the admission gate unless otherwise authorized by the Warden of the Institution. These coin-operated telephones shall meet the following minimum specifications:

The telephones at the road prisons and work release centers (community correction centers) shall be programmed to allow for outgoing calls only and the telephones for public use at each facility shall have two way outgoing and incoming service. All coin-operated phones at work release centers shall meet call blocking requirements as set forth in Section II., H., 6. Coin-operated phones for public use do not need to meet call blocking requirements.

These telephones shall meet all FCC regulations regarding alternate carrier access.

**4. Monitoring/Recording Terminals**

The Contractor shall provide new monitoring/recording terminals for investigative and monitoring purposes. Each terminal should include a monitor and a CPU with a CD burner and the corresponding, fully functional CD burning software, Windows XP or newer operating system, appropriate input devices, (mouse, keyboard, etc) with a sound card with external speakers and accessible headphone jack.

All monitoring/recording terminals shall operate using recording and playback features that utilize industry standard file formats (\*.wav, \*.mp3, \*.midi, etc).

**5. Equipment Service & Maintenance Requirements**

The Contractor shall provide equipment to support service delivery as specified herein at all designated Department facilities that is fully functional in regards to all labor, materials, service hardware and/or software. The Contractor shall further warrant that any equipment installed for the Department shall be free of defects, irregularities, unprofessional installation, code violations and shall operate as designed and proposed or negotiated. Should the equipment not operate as designed and proposed or negotiated, or violate any local, state or federal code, rule or ordinance, the Contractor shall correct the defect or irregularity or bring the service to within code, rule or ordinance at no cost to the Department including payment for any fines or penalties associated therewith.

The Department understands the tentative nature of ensuring that service to any component of the system is completed in a set period of time. Nonetheless, time is of the essence in completing emergency and other service repairs or replacements. Thus, the Contractor is required to meet all response times listed in this subsection and Section II., K., 6., to return the system to normal operating status. In the event of extraordinary obstacles to service for which the Contractor exceeds the time-to-service requirement, notification and a detailed plan of service shall be immediately provided to the Department by the Contractor.

All requests for service calls from the Department shall be answered by a "live" operator at all times.

Critical components shall be within the available service area for each Department institution. The Contractor shall guarantee to the Department that all parts and materials necessary to repair the ITS are readily available to the respective Field Repair/Site Technicians 24 hours per day, seven days per week, 365 days per year. The Department will not accept the delay of service repair based on the fact that Field Repair/Site Technicians cannot access a parts warehouse, office or similar Contractor facility because the facility is not open "after hours", or on weekends or holidays.

The Contractor shall track all service downtime for each Department facility and compile per-facility records of the downtime for each month to comply with the Trouble Ticket/Repair Time Report specified in Section II., M.



All system maintenance shall be performed by the Contractor's Field Repair/Site Technician during the twice weekly visits to the institution. The Field Repair/Site Technician shall notify the Assistant Warden for Programs of his/her anticipated arrival time for each site visit and discuss any problems or concerns regarding the ITS.

The Contractor's Site Technician shall notify the Assistant Warden for Programs if it is determined during the repair that the damage to the system was caused by inmate vandalism.

**6. Response and Repair Times for Service Calls**

Should any critical component of the ITS provided by the Contractor fail, the Contractor shall respond to the Department's request for service calls in the following manner: (For the purposes of this Section, business hours are defined as twenty-four (24) hours per day, seven days per week.)

NOTE: All repairs shall be completed prior to the normal operational hours of the inmate telephone system, unless approved by the Local Contract Coordinator-Operations, or the Warden at effective Institution or facility.

**a. Routine Service**

For routine service, the Contractor shall respond to the service problem within four (4) hours of the initial system failure notice or request for service report by the Department facility, through the use of remote testing or access. Records of testing and compliance with this requirement shall be available to the Department upon request.

The Contractor shall contact the Department facility with the following information within six (6) hours of the initial system failure notice or service request:

- 1) Remote testing results, if applicable; or
- 2) An update of the remote testing process, if applicable; or
- 3) Notice that a technician has been dispatched and the estimated time of arrival at the Department site.

Should the service not be equipped for remote access, the Contractor shall have a qualified technician, suitably equipped for the installed service, on-site at the Department facility within twelve (12) hours from the time of initial system failure notice or request for service report.

All routine service shall be completed within twenty-four (24) hours of the initial system failure notice or service request or liquidated damages may be imposed as stated in Section II., R.

**b. Major Emergency Repair Service**

For a major emergency, the Contractor shall respond to the service problem within one (1) hour of initial system failure notice or request for service report by the Department facility, through the use of remote testing or access.

Records of testing and compliance with this requirement shall be available to the Department upon request.

The Contractor shall contact the Department facility with the following information within two (2) hours of the initial system failure notice or service request:

- 1) Remote testing results, if applicable; or
- 2) An update of the remote testing process, if applicable; or
- 3) Notice that a technician has been dispatched and the estimated time of arrival at the Department site.

Should the service not be equipped for remote access, the Contractor shall have a qualified technician, suitably equipped for the installed service, on-site at the Department facility within four (4) hours from the time of initial system failure notice or service request.

All major emergency service shall be completed within twelve (12) hours of the initial system failure notice or request for service or liquidated damages may be imposed as stated in Section II., R.

**7. Escalation Procedures During Repair Service**

The Contractor shall provide escalation procedures to address inadequate response to service calls, frequent repetition of the same service problem, inadequate repairs to service, etc. These described procedures shall include the name and title of service and management personnel as well as criteria for service escalation to a certain "level" within the Contractor's organization. Updated contact names and telephone numbers of the service and management positions listed/described in the escalation procedures shall be made available to the Department immediately upon request.

**L. Bi-Annual Audit**

The Contractor shall provide to the Department a bi-annual audit report from an independent certified public accounting firm verifying that the Contractor's Inmate Telephone Service and systems and equipment are accurately and completely recording all calls and related charges. The bi-annual audit report shall contain a certification from the auditing firm that its findings are totally unbiased and independent of the Contractor's interest. The audit shall be submitted to the Local Contract Coordinator-Accounting within forty-five (45) days after each six-month period of the contract. The independent certified public accounting firm's bi-annual audit report shall be issued simultaneously to the Department and to the Contractor.

The following definitions pertain to the bi-annual audit report to be provided by the certified public accounting firm: "Accurately" shall mean the ability to detect when a chargeable call begins (active acceptance by the called party) and when it is terminated. "Completely" shall mean that the Commission and Call Detail Report lists all calls made on all phones including un-collectibles.

The independent certified public accounting firm's procedures and reports shall be conducted in accordance with Statements on Standards for Attestation Engagements established by the American Institute of Certified Public Accountants. The Contractor shall submit notification of their chosen auditor in writing to the Local Contract Coordinator-

Accounting for the Department's approval prior to the end of the first (1st) month of the Contract. The independent certified public accounting firm shall submit an engagement letter and a formal test plan to be agreed upon by the Department and the Contractor in writing prior to the end of the first three (3) month period of the Contract. The Contractor shall notify the Department in writing of any proposed changes in their selected certified public accounting firm.

The scope of the bi-annual audit will encompass, at a minimum, the following requirements:

1. The number of test calls used in the sampling technique will be great enough to ensure a confidence level of ninety-five percent (95%) or greater that the sample results are truly reflective of the entire population.
2. The Contractor shall not know the selection of test sites and times. The independent certified public accounting firm will contact the Department's Local Contract Coordinator – Operations to arrange for the tests.
3. The test call methodology should include means to verify that all ITSE (telephone instruments) at each location which are supplied by the Contractor are connected to and providing information into the billing service.

M. Reporting Requirements

1. **Inmate Telephone System Generated Reports:** At a minimum, the ITS shall allow the Department to generate the following "canned" reports directly through an interface accessible through a secure internet site or via dedicated monitoring terminals. The Contractor shall provide reporting capability on all information contained in the inmate telephone system database, including recording of telephone calls. To ensure that reports are accurate and timely, the database shall be updated in real time so that all report data is current when viewed and/or downloaded by authorized Department personnel. The database shall be capable of maintaining a record of all reports that are downloaded, with the date and time of the download, and the name of the person who performed the download. All reports shall have the capability of being queried, sorted or filtered by any field contained in the report or by data parameters, as applicable, and reports shall be readable on screen, printable and shall be downloadable into an excel format. Reports shall also be viewable via a user-friendly interface. This interface shall be, at a minimum a Graphical User Interface (GUI) such as Windows XP. Report formats shall be subject to final approval by the Local Contract Coordinator - Operations or designee.
  - a. **Authorized Users Report:** The system shall provide a real time report of all Department and Contractor authorized users. This report shall include user name, status (active or inactive) and corresponding dates, user title and facility location.
  - b. **Approved Calling List Report:** The system shall provide a real time report of each inmate's approved calling list of ten (10) numbers. This report shall include inmate name, inmate pin #, inmate's facility location, name and phone numbers of everyone on the inmate's calling list, and Billing Number Address (BNA) for all numbers. The system shall also maintain a cumulative historical calling list for each inmate, showing all

numbers that have been added or deleted from the inmate's list and the corresponding dates.

- c. **Comprehensive Outgoing Call Report:** The system shall provide a real time report of all outgoing calls made from all Department facilities. This report shall include inmate name, inmate pin #, inmate's facility location, phone number called, date and time of call, length of call, and BNA for number called.
  - d. **Duplicate Number Report:** The system shall provide a real time report of all outgoing telephone numbers that appear on the active call lists of two or more inmates. This report shall include phone number, BNA for number called, inmate name, inmate pin #, and inmate's facility location.
  - e. **International Call Report:** The system shall provide a real time report of all overseas/international calls made. This report shall include inmate name, inmate pin #, number called, BNA for number called, inmate's facility location, date and time of call, length of call.
  - f. **Alert Level Report:** The system shall provide a real time report of all calls that generated an alert notification in the system. This will include three-way calls, as well as any other calls programmed to send an alert notification. This report shall include date and time of call, number called, BNA for number called, inmate name, inmate pin #, and type of alert.
2. **Contractor Submitted Reports:** The following reports shall be submitted by the Contractor in "hard copy" format to the Local Contract Coordinator - Operations on a monthly basis no more than fifteen (15) days following the end of the previous month.
- a. **Equipment Report:** The system shall provide a real time report of all assigned equipment (in use) and inventoried equipment containing a serial number. This report shall include description/type of equipment, serial number, facility location (including specific dormitory or other unique location), and assigned telephone number (for phone instruments).
  - b. **Trouble Ticket/Repair Time Report:** The system shall provide a real time report of all trouble tickets and repair times that are reported to the Contractor. This report shall include the assigned number with trouble, location (including specific dormitory or other unique location), date and time trouble was recorded in the system as occurring, date, time, and name of individual trouble was reported to at the facility, cumulative downtime as a result of trouble, downtime reason (e.g. processor failure, power failure, station failure, trunk failure, etc.) and date and time trouble was cleared.
  - c. **Ad Hoc Reports:** The Contractor shall provide the Department Ad Hoc Reports upon request of the Contract Manager, Local Contract Coordinator – Operations, or the Inspector General's Office.

**N. Contractor Staff Requirements**

The Contractor shall provide to the Contract Manager a proposed Contractor staffing plan which, at a minimum provides the staffing positions required in Section N., 1. The staffing plan shall identify each type of position, total number of proposed staff in each position-type, regional assignment/staff location and proposed weekly schedule, including the percentage of time dedicated to the contract, for each position.

**1. Contractor Staff Levels and Qualifications**

The Contractor shall have direct oversight, be responsible for and monitor the performance of all contractor staff performing services under the Contract. The Department will provide security for the Contractor's employees and agents consistent with the security provided at other Department facilities.

The Contractor shall provide an adequate level of staffing for provision of the services outlined herein and shall ensure that staff providing services is appropriately trained, qualified and licensed, if required. The Contractor shall be responsible for all expenses incurred for travel, including transportation, and meals incurred on behalf of Contractor's staff positions.

Additionally, the Contractor's staff shall liaise with and maintain a good working relationship with Department staff and other providers working with the Department.

The Contractor shall provide the following positions, at a minimum, in support of this contract:

**a. ITS System Administrator**

One (1) full-time (40 hours per week) ITS System Administrator position dedicated to the Department. This position is directly responsible for overall operational performance of the contract, including account management, troubleshooting, training, and any other responsibilities agreed upon by the Contract Manager or Local Contract Coordinator-Operations and the Contractor. This individual shall have a minimum of three (3) years' experience within the last five (5) years at the management level, providing direct administrative oversight of telephone services. The Contractor shall be responsible for ensuring that the ITS System Administrator attends meetings upon Department request.

**b. Field Repair/Site Technicians**

A minimum of fourteen (14) full time (40 hours per week) Field Repair/Site Technician positions dedicated to the Contract. Field Repair/Site Technician positions are directly responsible for providing twice-weekly preventative maintenance on the system at each institution, including assisting with installation of cable and equipment, and shall provide technical support and repairs as necessary, assist in on-site instruction and provide training for Department personnel to ensure customer satisfaction. These individuals shall possess a High School Diploma or GED and have two (2) years' minimum experience with a computer-based telephone system similar to the type required in this contract.

c. Service Representatives

A minimum of seventeen (17) full time (40 hours per week) Service Representative positions dedicated to the Contract. These positions include ten (10) Service Representatives to roam between Department Regions, five (5) Service Representatives located at the Department's five Reception Centers and two (2) Service Representatives located at Central Office.

Service Representative positions shall be directly responsible for making data entry input and changes to the inmate phone access information including input of approved inmate PIN and authorized calling numbers, verification of Billing Number Addresses, assistance to authorized DC personnel, and shall provide customer service relative to the ITS. These individuals shall possess a High School Diploma or GED, be computer literate and have related experience in the provision of services of the type required in this contract.

d. IT Data Administrators

A minimum of four (4) full time IT Data Administrator positions (providing coverage on eight (8) hour shifts, twenty four (24) hours a day, seven (7) days a week) to be located at the Contractor's monitoring center to support ITS. Duties include monitoring the system network to detect any problems and remotely correct identified problems without dispatching a field/repair technician to the Department's facility. If Contractor's IT Data Administrators cannot remotely correct or repair system problems, they are responsible for dispatching the appropriate field repair/site technician to the facility to make repairs as necessary.

e. ITS Trainer

One (1) full-time (40 hours per week) ITS Trainer dedicated to the training needs of the Department. This position shall be available for travel to Department facilities throughout the State to provide training to Department staff. All training shall be provided in accordance with the training requirements in Section II., O.

The final selection of all staff assigned to provide services under this Contract shall be subject to approval by the Department. Department employees terminated at any time by the Department for cause may not be employed or provide services under the Contract. The Department shall not employ criteria to approve or disapprove the selection of Contract employees that exposes the Contractor or the Department to civil or criminal liability under applicable federal or state civil rights laws, including, but not limited to, those laws establishing or protecting employee rights.

The Contractor's staff on-site shall adhere to the standards of conduct prescribed in Chapter 33-208, Florida Administrative Code, and as prescribed in the Department's personnel policy and procedure guidelines, particularly rules of conduct, employee uniform and clothing requirements (as applicable), security procedures, and any other applicable rules, regulations, policies and procedures of the Department. The Contractor's staff shall be subject to and shall comply with all security regulations and procedures of the Department and the respective institution. Violation of regulations may result in the

employee or individual being denied access to the institution. In this event, the Contractor shall provide alternate personnel to supply services described herein, subject to Department approval.

**2. Staff Background/Criminal Record Checks**

- a. The Contractors' staff assigned to this Contract shall be subject, at the Department's discretion and expense, to a Florida Department of Law Enforcement (FDLE) Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) background/criminal records check. This background check will be conducted by the Department and may occur or re-occur at any time during the Contract period. The Department has full discretion to require the Contractor to disqualify, prevent, or remove any staff from any work under the Contract. The Department is under no obligation to inform the Contractor of the records check findings or the criteria for disqualification or removal. In order to carry out this records check, the Contractor shall provide, prior to commencing services upon institution property, the following data for any individual Contractor or subcontractor's staff assigned to the Contract: Full Name, Race, Gender, Date of Birth, Social Security Number, Driver's License Number and State of Issue. If requested, the Contractor's staff shall submit to fingerprinting by the Department of Corrections for submission to the Federal Bureau of Investigation (FBI). The Contractor shall not consider new employees to be on permanent status until a favorable report is received by the Department from the FBI.
- b. The Contractor shall ensure that the Contract Manager or designee is provided the information needed to have the NCIC/FCIC background check conducted prior to any new Contractor staff being hired or assigned to work under the contract. The Contractor shall not offer employment to any individual or assign any individual to work under the contract, who has not had an NCIC/FCIC background check conducted.
- c. No person who has been barred from any Department institution or other facility shall provide services under this Contract.
- d. The Contractor shall not permit any individual to provide services under this Contract who is under supervision or jurisdiction of any parole, probation or correctional authority. Persons under any such supervision may work for other elements of the Contractor's agency that are independent of the contracted services.

Note that a felony or first-degree misdemeanor conviction, a plea of guilty or nolo contendere to a felony or first-degree misdemeanor crime, or adjudication of guilt withheld to a felony or first-degree misdemeanor crime does not automatically bar the Contractor from hiring the proposed employee. However, the Department reserves the right to prior approval in such cases. Generally, two (2) years with no criminal history is preferred. The Contractor shall make full written report to the Contract Manager within three (3) calendar days whenever an employee has a criminal charge filed against them, or an arrest, or receives a Notice to Appear for violation of any criminal law involving a misdemeanor, or felony, or ordinance (except minor violations for which the fine or bond forfeiture is two hundred dollars

(\$200) or less) or when Contractor or Contractor's staff has knowledge of any violation of the laws, rules, directives or procedures of the Department

**3. Staff Conduct**

The Contractor's staff on-site shall adhere to the standards of conduct prescribed in Chapter 33-208, Florida Administrative Code, and as prescribed in the Department's personnel policy and procedure guidelines, particularly rules of conduct, employee uniform and clothing requirements (as applicable), security procedures, and any other applicable rules, regulations, policies and procedures of the Department.

In addition, the Contractor shall ensure that all staff adhere to the following requirements:

- a. The Contractor's staff shall not display favoritism to, or preferential treatment of, one inmate or group of inmates over another.
- b. The Contractor's staff shall not deal with any inmate except in a relationship that supports services under this Contract. Specifically, staff members must never accept for themselves or any member of their family, any personal (tangible or intangible) gift, favor, or service from an inmate or an inmate's family or close associate, no matter how trivial the gift or service may seem. The Contractor shall report to the Contract Manager any violations or attempted violation of these restrictions. In addition, no staff member shall give any gifts, favors or services to inmates, their family or close associates.
- c. The Contractor's staff shall not enter into any business relationship with inmates or their families (example – selling, buying or trading personal property), or personally employ them in any capacity.
- d. The Contractor's staff shall not have outside contact (other than incidental contact) with an inmate being served or their family or close associates, except for those activities that are to be rendered under the Contract.
- e. The Contractor's staff shall not engage in any conduct which is criminal in nature or which would bring discredit upon the Contractor or the State. In providing services pursuant to this Contract, the Contractor shall ensure that its employees avoid both misconduct and the appearance of misconduct.
- f. Any violation or attempted violation of the restrictions referred to in this section regarding employee conduct shall be reported by phone and in writing to the Contract Manager or their designee, including proposed action to be taken by the Contractor. Any failure to report a violation or take appropriate disciplinary action against the offending party or parties shall subject the Contractor to appropriate action, up to and including termination of this Contract.
- g. The Contractor shall report any incident described above, or requiring investigation by the Contractor, in writing, to the Contract Manager or their designee within twenty four (24) hours, of the Contractor's knowledge of the incident.

**O. Training, Training Materials, Instructional Brochures**

The Contractor shall develop and provide training as determined necessary by the Department on the ITS system. All training shall be provided by the Contractor's full-time



trainer (position outlined in Section II., N.) who will provide ongoing training as needed to ensure current and incoming DC staff is properly trained in the operational use of the inmate telephone service and system and the use of all associated equipment and services, specifically training in use of monitoring and reporting functionality. In addition, refresher training shall be provided as determined necessary by the Department. Training shall take place at locations designated by the Department as determined necessary by the Local Contract Coordinator-Operations.

The Contractor shall provide all materials and equipment necessary to perform the training and shall utilize actual equipment utilized under the resulting Contract. A minimum of one hundred (100) copies of the approved training curriculum and/or user manuals for Department staff shall be made available for each training session. Additional training manuals shall be provided upon request of the Contract Manager or Local Contract Coordinator-Operations or designee.

The Contractor shall provide a sufficient number of instructional brochures to friends and families explaining the inmate telephone service, including rates for collect calls, and rates and payment options for pre-paid accounts.

In addition, upon implementation of the e-messaging service, the Contractor shall provide a sufficient number of instructional brochures to friends and families explaining the e-messaging service, including rates and payment options.

In addition, the Contractor shall provide a sufficient number of instructional brochures explaining use of the telephone service for distribution to inmates.

All training, training materials and instructional brochures shall be provided at no cost to the Department.

**P. Performance Measures**

By executing this contract, Contractor agrees to be held accountable for the achievement of certain performance measures in successfully delivering services under this Contract. The following Performance Measure categories shall be used to measure Contractor's performance and delivery of services: Note: the Contractor shall comply with all contract terms and conditions upon execution of contract and the Department may monitor each site upon implementation of services at that site to ensure that contract requirements are being met.

1. Performance Outcomes and Standards; and
2. Other Contract Requirements.

A description of each of the Performance Measure categories is provided below:

1. Performance Outcomes and Standards

Listed below are the key Performance Outcomes and Standards deemed most crucial to the success of the overall desired Inmate Telephone Service. The Contractor shall ensure that the stated performance outcomes and standards (level of achievement) are met. Performance shall be measured per institution as indicated, beginning the second month after which service has been fully implemented.

- a. Completion of Routine Service:

Outcome: All requests for routine service shall be completed within twenty-four (24) hours of request for service from the Department, unless otherwise excepted.

Measure: Compare the date/time that service is completed to the date/time that the request for service was received from the Department by the Contractor. (Measure Monthly for each institutional location).

Standard: Ninety-five percent (95%) of routine service requests shall be completed within twenty-four (24) hours of notice from the Department.

**b. Completion of Major Emergency Repair Service:**

Outcome: All major emergency repair service shall be completed within twelve (12) hours of request for repair from the Department, unless otherwise excepted.

Measure: Compare the date and time that major emergency repair service is completed to the date/time that the request for major emergency repair service was received from the Department by the Contractor. (Measure Monthly for each institutional location).

Standard: Ninety-five percent (95%) of major emergency repair service shall be completed within twelve (12) hours of notice from the Department.

**c. Commission and Call Detail Report (Invoice Documentation):**

Outcome: The Contractor shall provide the Commission and Call Detail Report within thirty (30) days of the last day of the Contractor's regular billing cycle.

Measure: Compare the date the Commission and Call Detail Report was received with the last day of the Contractor's regular billing cycle. (Measure Monthly)

Standard: One hundred percent (100%) of Commission and Call Detail Reports shall be received within thirty (30) days of the last day of the Contractor's regular billing cycle.

By execution of this Contract the Contractor hereby acknowledges and agrees that its performance under the Contract shall meet the standards set forth above. Any failure by the Contractor to achieve any outcome and standard identified above may result in assessment of Liquidated Damages as provided in Section II., R. Any such assessment and/or subsequent payment thereof shall not affect the Contractor's obligation to provide services as required by this Contract.

**2. Other Contract Requirements**

Standard: The Department will monitor the Contractor's performance to determine compliance with other contract requirements at each institutional site, including, but not limited to, the following:

- a. Transition/Implementation/Installation of System;
- b. Bi-Annual Audit;
- c. Timely Submittal of Corrective Action Plans (when applicable); and

- d. Compliance with Other Terms and Conditions of the Contract not involving delivery of services otherwise listed above.

Measure: Failure to meet the agreed-upon Final Transition/Implementation schedule or failure to meet the Bi-Annual Audit Requirement will result in the imposition of liquidated damages without opportunity for correction or relief as a result of extenuating circumstances. For compliance regarding Other Terms and Conditions of the Contract, the Contractor shall achieve 100% compliance after the time frames indicated in the Contractor's Corrective Action Plan (CAP) for completion of corrective action on identified deficiencies.

**Q. Monitoring Methodology**

**1. Performance Outcomes and Standards**

The Department's Contract Manager and/or designee will monitor the Contractor's service delivery to determine if the Contractor has achieved the required level of performance for each Performance Outcome and Standard identified in Section II., P., 1. Performance measures shall be assessed as specified beginning the second month after services have been implemented. If the Department determines that Contractor has failed a Performance Outcome and Standard, Contractor will be sent a formal contract communication in accordance with Section II., C. Note: The Contractor shall correct all identified non-compliant service delivery related to failure to meet the Performance Outcomes and Standards identified in Section II., P., 1, however, this shall not negate the fact that a performance outcome and standard has not been met and that liquidated damages will be imposed.

**2. Other Contract Requirements**

Monitoring for Other Contract Requirements, identified in Section II., P., 2., shall be conducted no less than twice a year. (Final Contract Monitoring tool to be developed by the Department's Bureau of Institutional Support Services in accordance with the requirements in the resultant contract.) Such monitoring may include, but is not limited to, both announced and unannounced site visits.

The Department's Contract Manager or designee will provide an oral exit report at termination of the monitoring visits and a written monitoring report to the Contractor within three weeks of the monitoring. Non-compliance issues identified by the Contract Manager or designee will be identified in detail to provide opportunity for correction, where feasible.

Within ten (10) days of receipt of the Department's monitoring report, the Contractor shall provide a formal Corrective Action Plan (CAP) in response to all noted deficiencies to include responsible individuals and required time frames for achieving compliance. Such time frames for compliance shall not exceed thirty (30) days, unless specifically agreed upon in writing by the Department. All noted deficiencies shall be corrected within the time frames identified or the Department will impose liquidated damages in accordance with Section II., R.,2. The Contract Manager, Local Contract Coordinator - Operations or other designated Department staff may conduct follow-up monitoring reviews at any time to determine compliance based upon the submitted CAP.

The Department reserves the right for any Department staff to make scheduled or unscheduled, announced or unannounced monitoring visits.

During follow-up monitoring, any noted failure by the Contractor to correct deficiencies for Other Contract Requirement violations identified in the monitoring report within the time frame specified in the CAP may result in application of Liquidated Damages as specified in Section II., R.,2.

3. Repeated Instances

Repeated instances of failure to meet either the Performance Outcomes and Standards or Other Contract Requirements or to correct deficiencies may, in addition to imposition of liquidated damages, result in determination of Breach of Contract, and/or termination of the Contract in accordance with Section VI, Termination.

R. Liquidated Damages

The Contractor expressly agrees to the imposition of liquidated damages.

The Department's Contract Manager will provide written notice to the Contractor's Representative of all liquidated damages assessed accompanied by detail sufficient for justification of assessment. The Contractor shall forward a cashier's check or money order to the Contract Manager, payable to the Department in the appropriate amount, within ten (10) days of receipt of a written notice of demand for damages due.

1. Liquidated Damages For Failure to meet Performance Outcomes and Standards

The Contractor hereby acknowledges and agrees that its performance under the Contract shall meet the Performance Outcomes and Standards set forth in Section II., P., 1. If the Contractor fails to meet any Performance Outcomes and Standards, the Department will impose Liquidated Damages in the amount of \$2,500.00 per standard per institutional site. Repeated failure to meet performance outcomes and standards in consecutive months will result in liquidated damages being doubled.

2. Liquidated Damages For Other Contract Requirements

For failure to meet other contract requirements, set forth in Section II.,R.,2, liquidated damages will be imposed as follows:

a. Failure to Meet Implementation/Transition Schedule

In the event the Contractor fails to complete transition, implementation and installation of the ITS at each facility within the time frames established on the Final Transition and Implementation Schedule, liquidated damages in the amount of ten thousand dollars (\$10,000.00) per institution/facility for which services were not timely implemented will be imposed against the Contractor. Continued failure to complete transition, implementation and installation of services will result in the imposition of damages in the amount of five thousand dollars (\$5,000.00) for each additional ten (10) day period or part thereof that the institution/facility remains non-operational, until such time as services are fully implemented and fully operational.

**b. Failure to Meet Performance on Bi-Annual Audit**

In the event the bi-annual audit specified in Section II. L., fails to verify that the Contractor's Inmate Telephone Service and systems and equipment are accurately and completely recording all calls and/or related charges as required, liquidated damages in the amount of ten thousand dollars (\$10,000.00) will be imposed against the Contractor for the bi-annual audit period failed.

**c. Failure to Timely Submit Corrective Action Plan (CAP)**

In the event that the Contractor received a Monitoring Report requiring a Corrective Action Plan (CAP) and fails to submit a CAP responding to each specified written deficiency within the time frames specified in Section II., Q., liquidated damages in the amount of five thousand dollars (\$5,000.00) will be imposed against the Contractor.

**d. Failure to Timely Correct Identified Contract Deficiencies**

In the event the Contractor fails to correct deficiencies noted in the Department's monitoring report within the time frames indicated in the CAP, liquidated damages in the amount of one thousand dollars (\$1,000.00) per day per institutional site where deficiencies exist shall be imposed until such time as all noted deficiencies are corrected unless otherwise agreed to by the Department.

**e. Failure to Timely Submit Final commission Payment**

In the event the Contractor fails to submit the final commission payment to the Department no more than forty-five (45) days after the end date of this Contract, liquidated damages in the amount of fifteen hundred dollars (\$1,500.00) per day for each day of late submission shall be imposed.

**S. Deliverables**

The following services or service tasks are identified as deliverables for the purposes of this Contract:

- Inmate Telephone Services as described in this Contract.
- A telephone calling system and database for monitoring purposes.
- All related equipment as set forth in Section II., K.
- Reporting as set forth in Section II., M.
- Compliance with contract terms and conditions.

**T. Contract Termination Requirements**

Upon the expiration date of the Contract resulting from this Contract (or any other termination date), the Contractor shall provide a copy of all historical data, in a format to be determined by the Contract Manager.

If, at any time, this Contract is canceled, terminated or otherwise expires, and a Contract is subsequently executed with a firm other than the Contractor, the Contractor has the

affirmative obligation to assist in the smooth transition of Contract services to the subsequent Contractor, including the provision of documents and information not otherwise protected from disclosure by law.

### **III. COMPENSATION**

#### **A. Payments and Invoices**

The Department established a fixed “to connect” surcharge for service delivery of its ITS. The “to-connect” surcharge established by the Department shall be utilized by the Contractor for local, local extended area calls, and for all calls on the North American Dialing Plan, including interlata, intralata, and interstate calls. There shall be no additional rate per minute charges allowed for local coin and local extended area calls.

#### **COLLECT CALL SURCHARGE:**

The Contractor shall provide inmate telephone COLLECT CALL service at the following surcharges and rates:

<b>TYPE OF CALL</b>	<b>“TO CONNECT” SURCHARGE</b>	<b>RATE PER MINUTE</b>
Local Coin	\$.50	\$0.00
Local Extended Area	\$.50	\$0.00
Inter-lata	\$1.20	\$0.04
Intra-lata	\$1.20	\$0.04
Interstate	\$1.20	\$0.04

#### **PREPAID CALL SURCHARGE:**

The Contractor shall provide inmate telephone PREPAID CALL service at the following surcharges and rates:

<b>TYPE OF CALL</b>	<b>“TO CONNECT” SURCHARGE</b>	<b>RATE PER MINUTE</b>
Local Coin	\$.50	\$0.00
Local Extended Area	\$.50	\$0.00
Inter-lata	\$1.02	\$0.04
Intra-lata	\$1.02	\$0.04
Interstate	\$1.02	\$0.04

#### **INTERNATIONAL CALL SURCHARGE AND RATES PER MINUTE:**

Surcharge and Rates per Minute for International Calls (Collect and Prepaid) shall not exceed the maximum rate allowed by the appropriate regulatory authority during the time the call is placed.

Charges for calls shall include only the time from the point at which the called party accepts the call and shall end when either party returns to an on-hook condition or until either party attempts a hook flash. There shall be no charges to the called party for any setup time for either collect or prepaid calls.

There shall be no additional fees, surcharges, or other types of costs associated with collect or prepaid calls or for establishing prepaid accounts billed to either the Department or families and friends of inmates establishing prepaid accounts.

In addition, the Contractor shall not charge, pass on, or pass through to the customer paying for collect or prepaid calls any charges referred to as Local Exchange Carrier's (LEC's) or Competitive Local Exchange Carrier's (CLEC's) billing costs, or any bill rendering fee or billing recovery fee. The Contractor shall also ensure that LEC's and CLEC's do not charge or pass on to the customer any additional fee or surcharges for billing. The Contractor shall be responsible for any such LEC or CLEC surcharges incurred if billing through the LEC or CLEC.

The Contractor shall pay to the Department each month a thirty-five percent (35%) commission of gross revenues received from this Contract. The Contractor shall be responsible for collections and fraud, and shall not make any deductions from gross revenue for uncollectible accounts, billing fees or other administrative costs prior to applying the commission percentage. Notwithstanding the above, gross revenues shall not include taxes charged by an appropriate governmental entity. The monthly commission amount is therefore obtained by multiplying the commission percentage times each month's total charges. Commission and Call Detail reports will be required with the monthly commission payment.

1.       Guaranteed Commission/Monthly Payment to the Department

The Contractor shall pay the Department a monthly thirty-five percent (35%) commission based on the gross revenue. The Department will begin to receive payment for a facility on the date the Contractor assumes responsibility for the operation of that facility's inmate telephone service in accordance with the Final Transition and Implementation Plan.

2.       Monthly Payment Submission

The Contractor shall remit the total monthly payment broken down into two (2) submittals: one (1) submittal shall be comprised of the total monthly commission due to the Department for recouping of the Department's operating costs (amount to be determined by Department within twenty (20) days of execution of contract) and a second submittal consisting of the remaining amount of the monthly commission due to the Department. Payment of the monthly amount shall be tendered to the Department by Electronic Funds Transfer (EFT) to a specified Department account within thirty (30) days after the final day of the Contractor's regular monthly billing cycle.

3.       Commission and Call Detail Report/Supporting Documentation for Monthly Payment

The Contractor shall submit to the Department, as supporting detail for the monthly payment of commission, a Commission and Call Detail Report in detail sufficient to allow the Department to recalculate gross revenue and validate the accuracy of the Department's commission and for a proper pre-audit and post-audit thereof. The Contractor shall submit the Commission and Call Detail Report with supporting documentation to the Local Contract Coordinator - Accounting:

Michael Deariso, CPA  
Bureau of Finance and Accounting

Department of Corrections  
Attention Revenues and Receipts  
P.O. Box 13600  
Tallahassee, FL 32317-3600

The Commission and Call Detail Report shall consist of the following: A list of all inmate calls made by PIN, time connected, time disconnected, rate charged [both per minute and total charge, separating any surcharge], duration of call, and called number and any other information necessary for the Department to independently calculate the gross revenue and the commission due. The report shall be submitted monthly on CD-ROM in detail and with a hard copy summary and shall also reflect the gross revenues generated by all inmate phones. Additional documentation requirements may be requested by the Department.

4. Final Commission Payment

The Contractor shall submit the final commission payment to the Department no more than forty-five (45) days after the end date of this Contract. If the Contractor fails to do so, the Contractor agrees to submit additional payment in the amount of fifteen hundred dollars (\$1,500.00) per day for each day of late submission (See Section II., R., 2., e.).

5. Subcontracts

No payments shall be made to the Subcontractor until all subcontracts have been approved, in writing by the Department.

B. Travel Expenses

The Department shall not be responsible for the payment of any travel expense for the Contractor that occurs as a result of this Contract.

C. Contractor's Expenses

The Contractor shall pay for all licenses, permits, and inspection fees or similar charges required for this Contract, and shall comply with all laws, ordinances, regulations, and any other requirements applicable to the work to be performed under this Contract.

**IV. CONTRACT MANAGEMENT**

A. Department's Contract Manager

The Contract Manager for this Contract will be:

Charles D. Terrell, Chief, Bureau of Institutional Support Services  
Department of Corrections  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2500  
Phone: (850) 410-4278  
Fax: (850) 922-9277  
terrell.charlie@mail.dc.state.fl.us



The Contract Manager will perform the following functions:

1. Maintain a contract management file;
2. Serve as the liaison between the Department and the Contractor;
3. Verify receipt of deliverables from the Contractor;
4. Monitor the Contractor's progress;
5. Evaluate the Contractor's performance;
6. Direct the Contract Administrator to process all amendments, renewals and terminations of this Contract;
7. Evaluate Contractor performance upon completion of the overall Contract. This evaluation will be placed on file and will be considered if the Contract is subsequently used as a reference in future procurements.

The Contract Manager may delegate the following functions to the Local Contract Coordinator (LCC):

1. Verify receipt of deliverables from the Contractor;
2. Monitor the Contractor's performance; and
3. Will notify the Contract Manager that the work is completed and will email and /or fax any documents relating to the service.

The Local Contract Coordinator for this Contract will be:

**Operations:**

Larry Purintun  
General Services Manager  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2500  
Phone: (850) 410-4180  
Fax: (850) 922-9277  
Email: purintun.larry@mail.dc.state.fl.us

**Accounting:**

Michael Deariso  
Finance and Accounting Director III  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2500  
Phone: (850) 922-9836  
Fax: (850) 488-1196  
Email: [deariso.michael@mail.dc.state.fl.us](mailto:deariso.michael@mail.dc.state.fl.us)

**B. Department's Contract Administrator**

The Contract Administrator for this Contract will be:

Lisa M. Bassett, Chief  
Bureau of Procurement & Supply  
Department of Corrections  
2601 Blair Stone Road  
Tallahassee, Florida 32399-2500  
Phone: (850) 488-6671  
Fax: (850) 922-5330  
Email: bassett.lisa@mail.dc.state.fl.us

The Contract Administrator will perform the following functions:

1. Maintain the official Contract file;
2. Process all Contract amendments, renewals, and termination of the Contract; and
3. Maintain the official records of all formal correspondence between the Department and the Contractor.

**C. Contractor's Representative**

The name, title, address, and telephone number of the Contractor's representative responsible for administration and performance under this Contract is:

Daniel McGuinn, Account Executive  
SECURUS Technologies, Inc.  
688 NW 33<sup>RD</sup> Street  
Margate, Florida 33063  
Phone: (954) 753-5184  
Fax: (954) 753-5184  
Email: dmcguinn@securustech.net

**D. Contract Management Changes**

After execution of this Contract, any changes in the information contained in Section IV., Contract Management, will be provided to the other party in writing and a copy of the written notification shall be maintained in the official Contract record.

**V. CONTRACT MODIFICATION**

Unless otherwise stated herein, modifications to the provisions of this Contract, with the exception of Section IV., CONTRACT MANAGEMENT, shall be valid only through execution of a formal Contract amendment.

**VI. TERMINATION**

**A. Termination at Will**

This Contract may be terminated by the Department upon no less than ninety (90) calendar days' notice, without cause, or by the Contractor upon no less than one hundred twenty (120) calendar days' notice, without cause, unless a lesser time is mutually agreed upon by both parties. Notice shall be delivered by certified mail (return receipt requested), by other method of delivery whereby an original signature is obtained, or in-person with proof of delivery.

**B. Termination for Cause**

If a breach of this Contract occurs by the Contractor, the Department may, by written notice to the Contractor, terminate this Contract upon twenty-four (24) hours' notice. Notice shall be delivered by certified mail (return receipt requested), by other method of delivery whereby an original signature is obtained, or in-person with proof of delivery. If applicable, the Department may employ the default provisions in Chapter 60A-1, Florida Administrative Code. The provisions herein do not limit the Department's right to remedies at law or to damages.

**C. Termination for Unauthorized Employment**

Violation of the provisions of Section 274A of the Immigration and Nationality Act shall be grounds for unilateral cancellation of this Contract.

## VII. CONDITIONS

### A. Records

#### 1. Public Records Law

The Contractor agrees to allow the Department and the public access to any documents, papers, letters, or other materials subject to the provisions of Chapters 119 and 945.10, Florida Statutes, made or received by the Contractor in conjunction with this Contract. The Contractor's refusal to comply with this provision shall constitute sufficient cause for termination of this Contract.

#### 2. Audit Records

a. The Contractor agrees to maintain books, records, and documents (including electronic storage media) in accordance with generally accepted accounting procedures and practices which sufficiently and properly reflect all revenues and expenditures of funds provided by the Department under this Contract, and agrees to provide a financial and compliance audit to the Department or to the Office of the Auditor General and to ensure that all related party transactions are disclosed to the auditor.

b. The Contractor agrees to include all record-keeping requirements in all subcontracts and assignments related to this Contract.

#### 3. Retention of Records

The Contractor agrees to retain all client records, financial records, supporting documents, statistical records, and any other documents (including electronic storage media) pertaining to this Contract for a period of five (5) years. The Contractor shall maintain complete and accurate record-keeping and documentation as required by the Department and the terms of this Contract. Copies of all records and documents shall be made available for the Department upon request. All invoices and documentation must be clear and legible for audit purposes. All documents must be retained by the Contractor at the address listed in Section IV., C., Contractor's Representative or the address listed in Section III., D., Official Payee, for the duration of this Contract. Any records not available at the time of an audit will be deemed unavailable for audit purposes. Violations will be noted and forwarded to the Department's Inspector General for review. All documents must be retained by the Contractor at the Contractor's primary place of business for a period of five (5) years following termination of the Contract, or, if an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the records shall be retained until resolution of the audit findings. The Contractor shall cooperate with the Department to facilitate the duplication and transfer of any said records or documents during the required retention period. The Contractor shall advise the Department of the location of all records pertaining to this Contract and shall notify the Department by certified mail within ten (10) days if/when the records are moved to a new location.

### B. Sponsorship

If the Contractor is a nongovernmental organization which sponsors a program financed partially by State funds, including any funds obtained through this Contract, it shall, in publicizing, advertising, or describing the sponsorship of the program, state: "Sponsored by SECURUS

Technologies, Inc. and the State of Florida, Department of Corrections.” If the sponsorship reference is in written material, the words “State of Florida, Department of Corrections” shall appear in the same size letters or type as the name of the organization.

F. Employment of Department Personnel

The Contractor shall not knowingly engage in this project, on a full-time, part-time, or other basis during the period of this Contract, any current or former employee of the Department where such employment conflicts with Section 112.3185, Florida Statutes.

G. Non-Discrimination

No person, on the grounds of race, creed, color, national origin, age, gender, marital status or disability, shall be excluded from participation in, be denied the proceeds or benefits of, or be otherwise subjected to, discrimination in the performance of this Contract.

H. Americans with Disabilities Act

The Contractor shall comply with the Americans with Disabilities Act. In the event of the Contractor’s noncompliance with the nondiscrimination clauses, the Americans with Disabilities Act, or with any other such rules, regulations, or orders, this Contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Contracts.

I. Indemnification

The Contractor shall be liable, and agrees to be liable for, and shall indemnify, defend, and hold the Department, its employees, agents, officers, heirs, and assignees harmless from any and all claims, suits, judgments, or damages including court costs and attorney’s fees arising out of intentional acts, negligence, or omissions by the Contractor, or its employees or agents, in the course of the operations of this Contract, including any claims or actions brought under Title 42 USC §1983, the Civil Rights Act.

J. Contractor’s Insurance

The Contractor agrees to provide adequate insurance coverage on a comprehensive basis and to hold such insurance at all times during the existence of this Contract. The Contractor accepts full responsibility for identifying and determining the type(s) and extent of insurance necessary to provide reasonable financial protection for the Contractor and the Department under this Contract. Upon the execution of this Contract, the Contractor shall furnish the Contract Manager written verification of such insurance coverage. Such coverage may be provided by a self-insurance program established and operating under the laws of the State of Florida. The Department reserves the right to require additional insurance where appropriate.

If the Contractor is a state agency or subdivision as defined in Section 768.28, Florida Statutes, the Contractor shall furnish the Department, upon request, written verification of liability protection in accordance with Section 768.28, Florida Statutes. Nothing herein shall be construed to extend any party’s liability beyond that provided in Section 768.28, Florida Statutes.

K. Independent Contractor Status

The Contractor shall be considered an independent Contractor in the performance of its duties and responsibilities under this Contract. The Department shall neither have nor exercise any control or direction over the methods by which the Contractor shall perform its work and functions other than as provided herein. Nothing in this Contract is intended to, nor shall be deemed to constitute, a partnership or a joint venture between the parties.

L. Disputes

Any dispute concerning performance of this Contract shall be resolved informally by the Contract Manager. Any dispute that can not be resolved informally shall be reduced to writing and delivered to the Department's Deputy Assistant Secretary of Institutions-Operations. The Deputy Assistant Secretary of Institutions-Operations shall decide the dispute, reduce the decision to writing, and deliver a copy to the Contractor, the Contract Manager and the Contract Administrator.

M. Copyrights, Right to Data, Patents and Royalties

Where activities supported by this Contract produce original writing, sound recordings, pictorial reproductions, drawings or other graphic representation and works of any similar nature, the Department has the right to use, duplicate and disclose such materials in whole or in part, in any manner, for any purpose whatsoever and to have others acting on behalf of the Department to do so. If the materials so developed are subject to copyright, trademark, or patent, legal title and every right, interest, claim or demand of any kind in and to any patent, trademark or copyright, or application for the same, will vest in the State of Florida, Department of State for the exclusive use and benefit of the State. Pursuant to Section 286.021, Florida Statutes, no person, firm or corporation, including parties to this Contract, shall be entitled to use the copyright, patent, or trademark without the prior written consent of the Department of State.

The Department shall have unlimited rights to use, disclose or duplicate, for any purpose whatsoever, all information and data developed, derived, documented, or furnished by the Contractor under this Contract. All computer programs and other documentation produced as part of the Contract shall become the exclusive property of the State of Florida, Department of State, and may not be copied or removed by any employee of the Contractor without express written permission of the Department.

The Contractor, without exception, shall indemnify and save harmless the Department and its employees from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or article manufactured or supplied by the Contractor. The Contractor has no liability when such claim is solely and exclusively due to the combination, operation, or use of any article supplied hereunder with equipment or data not supplied by the Contractor or is based solely and exclusively upon the Department's alteration of the article. The Department will provide prompt written notification of a claim of copyright or patent infringement and will afford the Contractor full opportunity to defend the action and control the defense of such claim.

Further, if such a claim is made or is pending, the Contractor may, at its option and expense, procure for the Department the right to continue use of, replace, or modify the article to render it noninfringing. (If none of the alternatives are reasonably available, the Department agrees to return the article to the Contractor upon its request and receive reimbursement, fees and costs, if any, as may be determined by a court of competent jurisdiction.) If the Contractor uses any

design, device, or materials covered by letter, patent or copyright, it is mutually agreed and understood without exception that the Contract prices shall include all royalties or costs arising from the use of such design, device, or materials in any way involved in the work to be performed hereunder.

N. Subcontracts

The Contractor is fully responsible for all work performed under this Contract. The Contractor may, upon receiving written consent from the Department's Contract Manager, enter into written subcontract(s) for performance of certain of its functions under this Contract. No subcontract, which the Contractor enters into with respect to performance of any of its functions under this Contract, shall in any way relieve the Contractor of any responsibility for the performance of its duties. All payments to subcontractors shall be made by the Contractor.

O. Assignment

The Contractor shall not assign its responsibilities or interests under this Contract to another party without prior written approval of the Department's Contract Manager. The Department shall, at all times, be entitled to assign or transfer its rights, duties and obligations under this Contract to another governmental agency of the State of Florida upon giving written notice to the Contractor.

P. Force Majeure

Neither party shall be liable for loss or damage suffered as a result of any delay or failure in performance under this Contract or interruption of performance resulting directly or indirectly from acts of God, fire, explosions, earthquakes, floods, water, wind, lightning, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, strikes, or labor disputes.

Q. Severability

The invalidity or unenforceability of any particular provision of this Contract shall not affect the other provisions hereof and this Contract shall be construed in all respects as if such invalid or unenforceable provision was omitted, so long as the material purposes of this Contract can still be determined and effectuated.

R. Use of Funds for Lobbying Prohibited

The Contractor agrees to comply with the provisions of Section 216.347, Florida Statutes, which prohibits the expenditure of State funds for the purposes of lobbying the Legislature, the Judicial branch, or a State agency.

S. Verbal Instructions

No negotiations, decisions, or actions shall be initiated or executed by the Contractor as a result of any discussions with any Department employee. Only those communications that are in writing from the Department's staff identified in Section IV., Contract Management, of this Contract shall be considered a duly authorized expression on behalf of the Department. Only communications from the Contractor's representative identified in Section IV., C., which are in writing and signed, will be recognized by the Department as duly authorized expressions on behalf of the Contractor.

T. Conflict of Interest

The Contractor shall not compensate in any manner, directly or indirectly, any officer, agent or employee of the Department for any act or service that he/she may do, or perform for, or on behalf of, any officer, agent, or employee of the Contractor. No officer, agent, or employee of the Department shall have any interest, directly or indirectly, in any contract or purchase made, or authorized to be made, by anyone for, or on behalf of, the Department.

U. Department of State Licensing Requirements

All entities defined under Chapters 607, 617 or 620, Florida Statutes, seeking to do business with the Department, shall be on file and in good standing with the State of Florida, Department of State.

V. MyFloridaMarketPlace Vendor Registration

All vendors that have not re-registered with the State of Florida since March 31, 2003, shall go to <http://vendor.myfloridamarketplace.com/> to complete on-line registration, or call 1-866-352-3776 for assisted registration.

W. Public Entity Crimes Information Statement

A person or affiliate who has been placed on the Convicted Vendor List following a conviction for a public entity crime may not submit a bid or proposal to provide any goods or services to a public entity, may not submit a bid or proposal to a public entity for the construction or repair of a public building or public work, may not submit bids or proposals for leases of real property to a public entity, may not be awarded or perform work as a Contractor, supplier, subcontractor, or consultant under a Contract with any public entity, and may not transact business with any public entity in excess of the threshold amount provided in Section 287.017, Florida Statutes, for Category Two for a period of thirty-six (36) months from the date of being placed on the Convicted Vendor List.

X. Discriminatory Vendors List

An entity or affiliate who has been placed on the Discriminatory Vendor List may not submit a bid or proposal to provide goods or services to a public entity, may not submit a bid or proposal with a public entity for the construction or repair of a public building or public work, may not submit bids or proposals on leases of real property to a public entity, may not perform work as a Contractor, supplier, subcontractor or consultant under a Contract with any public entity and may not transact business with any public entity.

Y. Governing Law and Venue

This Contract is executed and entered into in the State of Florida, and shall be construed, performed and enforced in all respects in accordance with the laws, rules and regulations of the State of Florida. Any action hereon or in connection herewith shall be brought in Leon County, Florida.

Z. No Third Party Beneficiaries

Except as otherwise expressly provided herein, neither this Contract, nor any amendment, addendum or exhibit attached hereto, nor term, provision or clause contained therein, shall be construed as being for the benefit of, or providing a benefit to, any party not a signatory hereto.

**AA. Reservation of Rights**

The Department reserves the exclusive right to make certain determinations regarding the service requirements outlined in this Contract. The absence of the Department setting forth a specific reservation of rights does not mean that any provision regarding the services to be performed under this Contract are subject to mutual agreement. The Department reserves the right to make any and all determinations exclusively which it deems are necessary to protect the best interests of the State of Florida and the health, safety and welfare of the Department's inmates and of the general public which is serviced by the Department, either directly or indirectly, through these services.

**BB. Cooperative Purchasing**

As provided in Section 287.042(16)(a), Florida Statutes, other State agencies may purchase from this Contract, provided that the Department of Management Services has determined that the Contract's use is cost effective and in the best interest of the State. Upon such approval, the Contractor may, at its discretion, sell these commodities or services to additional agencies, upon the terms and conditions contained herein. In addition, other political subdivisions may also purchase from this Contract at the discretion of the Contractor. Entities purchasing from this Contract assume and bear complete responsibility with regard to performance of any contractual obligation or term.

**CC. Scope Changes After Contract Execution**

During the term of the Contract, the Department may unilaterally require, by written order, changes altering, adding to, or deducting from the Contract specifications, provided that such changes are within the general scope of the Contract.

The Department may make an equitable adjustment in the Contract prices or delivery date if the change affects the cost or time of performance. Such equitable adjustments require the written consent of the Contractor, which shall not be unreasonably withheld.

The Department shall provide written notice to the Contractor thirty (30) days in advance of any Department required changes to the technical specifications and/or scope of service that affect the Contractor's ability to provide the service as specified herein. Any changes that are other than purely administrative changes will require a formal Contract Amendment.

**DD. Performance Guarantee**

The Contractor shall furnish the Department with a Performance Guarantee in the amount of five hundred thousand (\$500,000.00) dollars. The Performance Guarantee shall be issued for a one-year period, renewed annually for the term of the Contract. The form of the guarantee shall be a bond, cashier's check, or money order made payable to the Department.

The guarantee shall be furnished to the Contract Manager within thirty (30) days after execution of this Contract. No payments shall be made to the Contractor until the guarantee is in place and approved by the Department in writing. Upon renewal of this Contract, the Contractor shall provide proof that the performance guarantee has been renewed for the term of the Contract renewal.



Based upon Contractor performance after the initial year of the Contract, the Department may, at the Department's sole discretion, reduce the amount of the bond for any single year of the Contract or for the remaining contract period, including the renewal.

EE. Convicted Felons Certification

No personnel assigned to this Contract may be a convicted felon or have relatives either confined by or under supervision of the Department.

Waiver of breach of any provision of this Contract shall not be deemed to be a waiver of any other breach and shall not be construed to be a modification of the terms of this Contract.

This Contract and any attachments or exhibits if included, ITN # 06-DC-7695 and the Contractor's response to the ITN, contain all the terms and conditions agreed upon by the parties. In the event of any conflict in language among these documents, this Contract will govern.

IN WITNESS THEREOF, the parties hereto have caused this Contract to be executed by their undersigned officials as duly authorized.

**CONTRACTOR:**

**SECURUS TECHNOLOGIES, INC.** through its wholly owned subsidiary, **T-NEXTIX Telecommunications Services, Inc.**

SIGNED

BY:

*D. J. Reinhold*

NAME:

*Dennis J. Reinhold*

TITLE:

*V.P. / General Counsel and Secretary*

DATE:

*9/24/07*

FEID #:

*Securus: 20-0722940*  
*T-Netix: 75-2212916*

**DEPARTMENT OF CORRECTIONS**

SIGNED

BY:

*James R. McDonough*

NAME:

**James R. McDonough**

TITLE:

**Secretary  
Department of Corrections**

DATE:

*25 Sept*

SIGNED

BY:

*Kathleen Von Hoene*

NAME:

**Kathleen Von Hoene**

TITLE:

**General Counsel  
Department of Corrections**

DATE:

*9/25/07*

**ATTACHMENT 1- SECURITY REQUIREMENTS FOR CONTRACTORS**

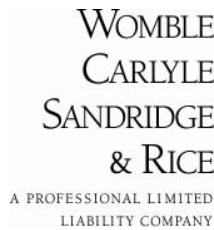
- (1) FS 944.47: Except through regular channels as authorized by the officer-in-charge of the correctional institution, it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send therefrom any of the following articles, which are hereby declared to be contraband.
  - (a) Any written or recorded communication or any currency or coin given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
  - (b) Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
  - (c) Any intoxicating beverage or beverage which causes or may cause an intoxicating effect.
  - (d) Any controlled substance or any prescription or nonprescription drug having a hypnotic, stimulating or depressing effect.
  - (e) Any firearm or weapon of any kind or any explosive substance. (This includes any weapons left in vehicles)

A person who violates any provision of this section as it pertains to an article of contraband described in subsections (1) a & (1) b is guilty of a felony of the third degree. In all other cases, a violation of a provision of this section constitutes a felony of the second degree.

- (2) Do not leave keys in ignition of motor vehicles. All vehicles must be locked and windows rolled up when parked on state property. Wheel locking devices may also be required.
- (3) Keep all keys in your pockets.
- (4) Confirm, with the Institutional Warden, where construction vehicles should be parked.
- (5) Obtain formal identification (driver's license or non-driver's license obtained from the Department of Highway Safety and Motor Vehicles). This identification must be presented each time you enter or depart the institution and at the request of Departmental staff.
- (6) Absolutely no transactions between contract personnel and inmates are permitted. This includes, but is not limited to, giving or receiving cigarettes, stamps, or letters.
- (7) No communication with inmates, verbal or otherwise, is permitted without the authorization of the officer-in-charge.
- (8) Strict tool control will be enforced at all times. Tools within the correctional institution are classified as AA, A, or B. Class AA tools are defined as any tool that can be utilized to cut chain link fence fiber or razor wire in a rapid and effective manner. Class A tools are defined as those tools which, in their present form, are most likely to be used in an escape or to do bodily harm to staff or inmates. Class B tools are defined as tools of a less hazardous nature. Every tool is to be geographically controlled and accounted for at all times. At the end of the workday, toolboxes will be removed from the compound or to a secure area as directed by security staff. You must have two copies of the correct inventory with each tool box, one copy will be used and retained by security staff who will search and ensure a proper inventory of tools each time the tool box is brought into the facility, the other copy will remain with the tool box at all times. Tools should be kept to a minimum (only those tools necessary to complete your job). All lost tools must be reported to the Chief of Security (Colonel or Major) **immediately**. No inmate will be allowed to leave the area until the lost tool is recovered.

- (9) Prior approval must be obtained from the Chief of Security prior to bringing any powder-activated tools onto the compound. Strict accountability of all powder loads and spent cartridges is required.
- (10) All persons and deliveries to be on Departmental lands will enter and exit by only one designated route to be determined by the Department and subject to security checks at any time. As the security check of vehicles is an intensive and time consuming (10-15 minutes) process, the contractor is requested to minimize the number of deliveries.
- (11) Establish materials storage and working areas with the Warden and/or Chief of Security.
- (12) Control end-of-day construction materials and debris. Construction materials and debris can be used as weapons or as a means of escape. Construction material will be stored in locations agreed to by security staff and debris will be removed to a designated location. Arrange for security staff to inspect the project area before construction personnel leave. This will aid you in assuring that necessary security measures are accomplished.
- (13) Coordinate with the Warden and Chief of Security regarding any shutdown of existing systems (gas, water, electricity, electronics, sewage, etc.). Obtain institutional approval prior to shutting down any existing utility system. Arrange for alternative service (if required) and expeditious re-establishment of the shutdown system.
- (14) All staff and equipment will maintain a minimum distance of 100 feet from all perimeter fencing.
- (15) With the intent of maintaining security upon the institution's grounds, a background check will be made upon all persons employed by the contractor or who work on the project. **The Department, represented by the Institution's Warden, reserves the right to reject any person whom it determines may be a threat to the security of the institution.**

**EXHIBIT F**



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July 7, 2008

**VIA ECFS**

Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: CC Docket No. 96-128, Martha Wright Alternative Rulemaking Proposal

Dear Chairman Martin:

Securus Technologies, Inc. ("Securus"), by and through counsel, replies to the *ex parte* letter filed June 27, 2008, by counsel for Petitioners in the above-named proceeding ("June 27 Letter"). Petitioners criticize or seek further explication of the points Securus raised in its letter filed May 23, 2008 ("May 23 Letter"). In response, Securus states as follows:

1. Inmate telephone rates at Florida Department of Corrections demonstrate that the Proposal is unnecessary and unfounded.

Petitioners' highlighting of the rates applied at facilities operated by the Florida Department of Corrections ("FL DOC") merits close consideration. June 27 Letter at 5. In fact, the FL DOC example militates against adoption of the rate cap and debit calling proposals for several reasons. First, the Commission should note that the FL DOC rates always include a per-call fee: \$1.20 for collect calls, and \$1.02 for prepaid calls. June 27 Letter at 5. Petitioners advocate, however, in direct contradiction to their Florida example, for a prohibition on per-call charges. The necessity of per-call rates was explained in Securus's May 23 Letter, and is discussed further in Section 5 below.

Secondly, it is noteworthy that the FL DOC does not have a debit calling system. Petitioners' proposal includes mandatory debit calling at every facility from which interstate calls are or could be placed. One of Petitioners' exemplar states, however, has determined that debit calling is inappropriate.

Third, the FL DOC rates demonstrate that inmate telephone rates are decreasing through operation of the market. Rates in other states, such as the Nebraska DOC sites and the New York DOC sites, are dropping significantly as well. This change is occurring through the

confluence of market forces and the policy decisions of individual states in the way their prisons operate. The Commission should note that States' rights to manage correctional policy remain not only intact, but are being used to achieve lower rates and increased inmate access to telephones. These rates also demonstrate, however, that Petitioners' proposed \$0.25 per-minute rate, with a prohibition on per-call charges, is far too low.<sup>1</sup>

Fourth, in response to Petitioners' request that Securus "explain how they are able to provide interstate inmate calling services profitably to some prisons," June 27 Letter at 2, a request that presumably applies to the FL DOC example, Securus states that its services installed at the Florida DOC are provided over an innovative network architecture that took years to develop and has been in use for less than two years. This network is particularly suited for high call volume locations with long-term contract arrangements that enable lower transmission costs and the spread of equipment costs over many calls for many years. Securus is working efficiently to deploy this new network throughout the country, wherever possible. However, this system may not be cost-effective at many locations and, as size and call volumes decrease, costs per call will rise. The intensive efforts that Securus took in developing this system demonstrate that the market is working to reduce both costs and rates without any regulatory intervention.

Fifth, FL DOC facilities experience some of the highest call volumes in the country, which dramatically lowers the apportionment of fixed costs on a per-call basis. These high call volumes are not representative of the entire nation, and are particularly not a valid comparison for county jails that, as Securus has stated, comprise 80% of its client base. May 23 Letter at 2.

For all these reasons, the FL DOC rates represent the bottom edge of inmate calling rates, and should not be deemed a benchmark for a nationwide interstate rate cap.

2. The Commission has not held that site commissions in inmate telecommunications are "profit."

Petitioners maintain that the Commission affirmatively held, in the context of inmate telecommunications, that "location rents are not a cost of payphones, but should be treated as profit." June 27 Letter at 11 (quoting *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Order on Remand & Notice of Proposed Rulemaking, 17 FCC Rcd. 3248, 3262 (2002)) ("*2002 Inmate NPRM*"). This conclusion is not clear from the face of that Order. Rather, as Securus previously stated, it appears that the Commission put the issue of site commissions out for comment without any proposed conclusion.

The *2002 Inmate NPRM* dealt with a request by the Inmate Calling Services Providers Coalition ("ICSPC") for reconsideration of the Commission's decision not to preempt state rate caps for inmate telephone services. The first area of inquiry was the meaning of the mandate in

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<sup>1</sup> Interstate collect calls from Nebraska DOC sites are \$0.20 per minute with a \$0.75 per-call charge. If the per-call charge were eliminated as Petitioners seek to do, it would require a 15-minute call to recover that amount. As Securus explains herein, the average length of interstate inmate calls is less than 15 minutes.

Section 276 that payphone providers be “fairly compensated for each and every call.” 17 FCC Rcd. at 3254 ¶ 14. In addressing that issue, the Commission harkened to its 1999 discussion of “location rents” that it reached only with regard to public payphones. *Id.* at 3255 ¶ 15 (quoting *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Third Report and Order, 14 FCC Rcd. 2569, 2562, 2615-16 (1999)) (“1999 Payphone Order”). In full, the 2002 *Inmate NPRM* states:

The Commission has previously described in detail the economic principles that control payphone telephony. Here, it is important to point out that the vast majority of payphone costs are fixed and common, even costs for operator assisted calls. Because of high fixed costs, any specific per call compensation rate will generate a profit or loss depending on how many calls are made from a particular payphone. It is difficult, therefore, to determine “fair compensation” for a particular call from a particular payphone because the “cost” of any call depends on how many other calls are made from that payphone. Finally, the Commission determined a payphone that “earns just enough revenue to warrant its placement, but not enough to pay anything to the premises owner” is “a viable payphone . . . because the payphone provides increased value to the premises.” Therefore, location rents are not a cost of payphones, but should be treated as profit.

17 FCC Rcd. at 3254-55 ¶ 15 (citations omitted).

Nothing in this paragraph indicates that the Commission reached a finding of fact or conclusion of law with regard to the site commissions that correctional facilities obtain in order to defray the costs of administration. Indeed, if the Commission had in fact reached a final conclusion, there would have been no need of the substantial Notice of Proposed Rulemaking that the 2002 *Inmate NPRM* included in which the Commission sought comment on several matters specific to the inmate telecommunications industry:

- “We initiate this rulemaking proceeding to explore whether the current regulatory regime applicable to the provision of inmate calling services is responsive to the needs of correctional facilities, ICS providers, and inmates, and, if not, whether and how we might address those unmet needs.” 17 FCC Rcd. at 3276 ¶ 72.
- “On the other hand, higher commissions may give confinement facilities a greater incentive to provide access to telephone services. Commission proceeds may be dedicated to a fund for inmate services or assigned to the state’s general revenue fund. We seek comment on commissions demanded by correctional institutions, whether and how any states have addressed the relationship between these commissions and inmate calling rates, and on any factors unique to the provision of inmate calling services that affect the profitability of ICS operations.” *Id.* at 3276 ¶ 73.

It is thus far from clear that the Commission has issued any ruling on whether site commissions are a cost to inmate telephone service providers. In fact, it appears that the Commission understands that site commissions are among the factors “that affect the profitability of ICS operations,” *id.*, because they are a cost — not a “profit” — to inmate service providers.

To the extent that the Commission is now considering whether to impose the conclusion about “location rents” from the *1999 Payphone Order* onto the inmate telecommunications industry, that action would be inappropriate. The provision of inmate telephone service differs in major respects from the manner in which public payphones are provided. In the public payphone context, as the Commission found, “location rents” are often divided between the premises owner and the payphone owner. *1999 Payphone Order*, 14 FCC Rcd. at 2562 n.72.<sup>2</sup> In the inmate context, there is no division of site commission funds. Further, the *1999 Payphone Order* found that location rents are imposed “only when a particular payphone location generates a number of calls that exceeds the break-even number of calls[.]” *Id.* No such threshold exists for the payment of site commissions — they are generally calculated as a percentage of gross revenue. As such, they are unavoidable and fixed.

The record in this proceeding and in this docket does not support superimposing the “location rent” analysis regarding public payphones onto the site commission structure of the inmate telecommunications market. The inmate telephone service providers, who are the regulated entities over whom the Commission holds interstate ratemaking jurisdiction, do not “split” site commission revenues with facilities and do not have a revenue threshold below which site commissions are excused. Site commissions are a top-line cost for the entities to which Petitioners’ rate proposal will apply. As such, any rate that is adopted in this proceeding must include recovery of site commissions, or it will be confiscatory and unlawful. *Verizon v. FCC*, 535 U.S. 467, 524 (2001) (quoting *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 312 (1989)).

3. Securus never suggested that rates must be set on a site-by-site basis, but rather it explained that Petitioners’ reliance on large facilities with high call volumes results in an inaccurate understanding of costs.

Petitioners criticize Securus for explaining that jail size and call volume are crucial variable factors in determining cost, arguing that the Commission has held elsewhere that telecommunications charges must not “be based on ... the costs of actual facilities used to provide service to a particular customer.” June 27 Letter at 3 (quoting *New Valley Corp. v. Pacific Bell*, 15 FCC Rcd. 5128, 5130 (2000)).

Petitioners misunderstand Securus’s point. The significance of the wide variance in jail size and call volume was raised not to request adoption of *ad hoc* inmate telephone rates, but rather to show that Petitioners’ cost model is inapposite. Petitioners base their proposed rates on

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<sup>2</sup> “Finally, we note that, when a payphone earns positive profits, it is not clear exactly how the payphone provider and location owner will negotiate the division of those profits.” *Id.*



data obtained in the Wright litigation which regards three very large facilities operated by the Corrections Corporation of America. May 23 Letter at 2-3. This data bears almost no relation to the smaller prisons and jails that comprise 80% of Securus's client base. *Id.* at 2. Accordingly, Petitioners' aggressive proposal for a \$0.20/\$0.25 interstate rap cap is not based on a proper view of the costs of providing inmate telecommunications.

4. Rates applied to automated interstate collect payphone calls are an appropriate point of comparison for inmate telephone rates.

Petitioners decry as "bogus" the comparison that Securus has drawn to the rates charged to users of public payphones for automated interstate collect calls. June 27 Letter at 8. Petitioners' analysis, however, fails to support their outlandish rhetoric. The rate comparison that Securus provided (May 23 Letter, Exh. B) demonstrates that long-distance carriers, who do not face the security requirements of inmate phones, are charging up to \$6.40 more for 10-minute interstate calls than T-Netix, and \$5.04 more than Evercom. Petitioners argue that these significantly higher rates "are paying for the convenience of making a call without a cell phone or a calling card," June 27 Letter at 8, but what must be noted is that these higher rates **do not** include site commissions or the increased costs of security features. For Petitioners nonetheless to maintain that inmate service providers are reaping exorbitant profits is comparatively hyperbolic.

Petitioners quote, somewhat curiously, a conclusion from the *CLEC Access Charge Order* stating that carriers had been collecting access charges from "consumers that have no competitive alternative." June 27 Letter at 8 (quoting *Access Charge Reform*, CC Docket No. 96-262, 16 FCC Rcd. 9923, 9938 (2001)).<sup>3</sup> Presumably Petitioners are analogizing to the fact that inmates are incarcerated and therefore do not have their own telephones. But Petitioners cannot say that the users of public payphones have any better "competitive alternative" than do inmates — these consumers may not be able to afford "a cell phone or a calling card," June 27 Letter at 8, and may not have sufficient credit to be qualified to obtain residential telephone service. Yet these end users pay rates that are up to 56% higher than Securus's rates for a payphone service that includes none of the specialized security features Securus must provide. Analysis of public payphone rates is thus entirely appropriate when determining whether inmate telephone rates are, as Petitioners argue, disproportionate to costs.

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<sup>3</sup> Also curious is that Petitioners borrow language from the Commission's International Settlement Rates order in a manner suggesting that the Commission has found that inmate providers "withheld the very cost data that would have enabled the Commission to establish precise, cost-based rates[.]" June 27 Letter at 9 (quoting *Cable & Wireless PLC v. FCC*, 166 F.3d 1224, 1233 (D.C. Cir. 1999)). The Commission has never found that the inmate telecommunications carriers have "withheld" information, and in fact there has been no Notice of Proposed Rulemaking for the Wright Petition by which such information could have been requested. Petitioners in fact recognize that the Commission may need to issue "an order requiring inmate service providers to submit data proving their service costs." Alternative Rulemaking Proposal at 29-30.

5. Petitioners' presumption of the length of inmate calls is not accurate, demonstrating that per-call rates remain appropriate.

Petitioners' proposed rate caps were derived from an analysis that presumes inmate calls to be 20 minutes in duration. Proposal at 19, 21. The Declaration of Douglas A. Dawson, appended thereto, relies on 15-minute calls and 20-minute calls for its analysis. Dawson Dec. ¶¶ 24, 42. For example, Petitioners use the rates applied at Colorado Department of Corrections facilities — \$1.25 surcharge plus \$0.19 per minute — divide by 20, and arrive at a “per minute cost of slightly over \$0.25 for a 20-minute call.” Proposal at 19. Essentially, Petitioners wish to eliminate all per-call charges by apportioning them over long inmate calls, resulting in a per-minute rate that roughly supports, via the rates they especially chose, the proposed rate caps of \$0.20 for debit calls and \$0.25 for collect calls.

One cannot assume such a long duration of inmate calls. The average length of interstate inmate calls is likely closer to 12 minutes, which under Petitioners' analysis would result in carriers being unable to recoup their costs of the call. It is for this reason that Securus has emphasized the need to adopt a per-call call charge, with time-sensitive charges passed through on an additional per-minute basis. The per-call charge is necessary to recover the fixed costs of the calling equipment, software development, and security features that Securus and other inmate telephone providers necessarily incur. May 23 Letter at 5. Moreover, as Securus explained previously, the fact that less than 40% of call attempts result in an accepted, billable call makes it crucial that all billed calls include a fixed per-call rate. *Id.* Petitioners' reliance on 15-minute and 20-minute calls in order to eliminate per-call charges is thus particularly misplaced in this market.

Based on its experience, Securus can state that the majority of its calls are much shorter than 15 minutes. In fact, Securus has found that inmates often attempt to avoid telephone charges by speaking for a matter of seconds, then hanging up, in hopes that the system would not have commenced billing for the call. This activity results in a significant proportion of calls being one minute in duration. Adoption of a \$0.25 per-minute rate and a prohibition on per-call charges, as Petitioners advocate, would entitle Securus to a mere \$0.25 for a completed one-minute inmate call.

In addition, call duration varies widely among types of correctional facilities. For example, calls from county jails are apt to be short, because those persons are detained for mere hours and generally use the telephone simply to arrange bail and legal representation. In state DOC facilities, by contrast, inmates will often speak for as long as permitted by the warden. It would be extremely difficult for the Commission to adopt a nationwide number for the duration of interstate calls such that it could ensure that carriers recover their costs via only a per-minute rate. And in fact the record demonstrates that per-call charges are the norm for interstate inmate calling rates, with the exception of Indiana Department of Corrections (“DOC”) rates for prepaid calls.<sup>4</sup>

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<sup>4</sup> All collect calls from Indiana DOC facilities include a per-call charge; at the \$0.25 per-minute rate, the per-call charge is \$1.50. See May 23 Letter at 4; Proposal, Exh. 13. The per-call charge was removed only for prepaid

Given the high fixed costs of inmate telecommunications service, and the tendency of inmate calls to be short and thus render fixed costs more difficult to recover, any rate that the Commission adopts should include a per-call charge. Time-sensitive cost components, such as transmission costs, would be appropriately recovered in the subsequent per-minute rate. This structure will better ensure cost recovery and is in keeping with the Commission's preference for separating the recovery of fixed versus time-sensitive costs in explicit rates. *E.g.*, 1999 *Payphone Order*, 14 FCC Rcd. at 2587-88 ¶¶ 97-99; *Access Charge Reform*, CC Docket No. 96-262, First Report and Order, 12 FCC Rcd. 15,982 ¶¶ 9, 16 (1997)

6. Allegations of disconnected calls provide no basis to eliminate per-call charges.

Petitioners raise the spectre of alleged "dropped" or disconnected calls as grounds to prohibit all "surcharges," or fixed per-call rates, for inmate calls. June 27 Letter at 7-8. These allegations are unfounded and uninformed.

Securus's inmate calling technology does not unwarrantedly disconnect calls. Rather, the technology was developed and is continually refined to ensure that inmates and their called parties do not make three-way calls or chain calls — such calls circumvent the security feature that prevents from calling protected persons such as judges, jurors, and witnesses. *See* May 23 Letter at 3. Securus's technology will "listen" for certain "events" that indicate that someone is attempting to engage a second line or to forward a call to another number. It is a specific combination of "events" that the system is geared to detect, not a mere pause in conversation as some have claimed. These events include lack of all ambient noise and transmission energy, and a spike in energy that indicates the pressing of the keypad or "clicking over" to a conferenced line. A combination of these events must occur, close in time, for the system to determine that unlawful call activity has taken place and disconnect the call.

Calls are not disconnected on mere whim. It is Securus's understanding that other inmate service providers, such as Pay Tel Communications, take similarly stringent precautions to ensure that inmate calls are not disconnected without reason. Accordingly, the instances in which a call is disconnected without cause are truly rare.

In addition, if a party believes that an inmate call was disconnected improperly, Securus has standard procedures for contesting a call charge and requesting a refund. When a billed party contests a charge on the ground that a call was disconnected and required the inmate to re-dial, Securus will investigate the call to discern whether the disconnection was appropriate. In Securus's experience, the vast majority of investigations reveal that in fact the inmate or the called party was attempting to make a three-way or forwarded call, and thus the disconnection was warranted. In the event that the call evidence does not support such a finding, Securus refunds the per-call charge of the second call.

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calls. This rate change was not evident from Petitioners' Exhibit 13, and in fact required an email from Petitioners' counsel to the Indiana DOC for confirmation. June 27 Letter, Att. B.

Allegations of disconnected calls therefore do not justify the elimination of per-call charges for interstate inmate calls. In all but a *de minimis* amount of cases, disconnected calls do not result in improper per-call charges. To prohibit per-call charges entirely would be a grossly disproportionate response and would preclude appropriate cost recovery for the vast majority of calls.

7. Petitioners are mistaken about the proportion of inmate calls that are interstate.

Petitioners assert, based on the 2002 *Inmate NPRM*, that “most calls from city and county facilities are local or intraLATA toll.” June 27 Letter at 3-4 (citing 2002 *Inmate NPRM*, 17 FCC Rcd. at 3253). They postulate that only “[t]he occasional interstate call” will be placed from “a jail or small prison.” *Id.* at 4. On this premise, Petitioners argue that the interstate calls to be affected by the rate cap will come from large state prisons that often entail “lower costs” — actually, the proper metric is higher call volume — and thus the low rate cap will permit appropriate cost recovery. From this flawed basis, Petitioners conclude that the drastically low \$0.25 per-minute cap will enable carriers to recover their costs for interstate calls. June 27 Letter at 4.

Petitioners are mistaken in believing that only “the occasional interstate call” will come from county and city jails. Often county jails agree to house inmates from other counties, even across state borders. Those inmates will be placing interstate calls. Securus, for example, serves over 80 county facilities where more than 50% of all inmate calls are interstate calls. In addition, Securus serves hundreds of county facilities where over 25% to 30% of inmate calling is interstate in nature. Further, interstate calling is prevalent in many county and city facilities along the nation’s southern border and in numerous counties located close to state lines. To claim that interstate calling from county and city jails is *de minimis* or insignificant is thus simply wrong. Therefore, it would be unfounded for the Commission to conclude that only large, high-volume facilities initiate the vast bulk of interstate calling.

Further, it would be improper for the Commission to impose the \$0.25 per-minute rate on smaller facilities that, as Petitioners implicitly concede, do not exhibit the economics to support it. *See* June 27 Letter at 3. In fact, Petitioners’ misconception of the amount of interstate calling from county and city jails would impose two concurrent negative impacts on cost recovery at these facilities. First, virtually all of these facilities will have considerably less overall call volume, compared to the huge facilities used in Petitioners’ analysis, which to spread the fixed cost of the inmate telephone system. Secondly, and as a result, Petitioners expect this low volume of intrastate calls, which are already extremely costly on a per-call, to recoup the cost of extremely below-cost interstate calls at \$0.25 per minute with no per-call charge.

Finally, Petitioners’ facile treatment of smaller facilities invites the Commission to force carriers to use large facilities to subsidize smaller ones. They state that if “[t]he occasional interstate call” is “made from a jail or small prison,” and the \$0.25 rate is below cost, the Commission need not be concerned because “a service provider, such as Securus ... enjoys economies of scale from serving state prison systems and other large facilities.” June 27 Letter at 4. In other words, the Commission should impose disproportionate costs on large facilities

and expect them to subsidize interstate calls from smaller ones. This argument runs directly contrary to the disdain for implicit subsidies that is clear in the last decade of the Commission's wireline regulation. *E.g.*, *Access Charge First Report and Order*, 12 FCC Rcd. 15,982 ¶¶ 9, 16; *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order, 12 FCC Rcd. 8776 ¶ 2 (1997). In fact, this call for subsidies contravenes the Commission's conclusion in this very docket that, for public payphones, compensation rules must not "unfairly require one segment of payphone users to disproportionately support the availability of payphones to the benefit of another segment of payphone users." *1999 Payphone Order*, 14 FCC Rcd. at 2570 ¶ 57.<sup>5</sup>

8. Petitioners are mistaken about the frequency with which service contracts are renegotiated shortly after execution.

Petitioners assert that their proposed 12-month transition period is appropriate, June 27 Letter at 12, despite Securus's explanation that this period is far too short to enable the renegotiation of the more than 2,000 contracts it presently holds throughout the country. May 23 Letter at 9. Petitioners attempt to refute Securus's argument with a sweeping generalization that inmate telephone service contracts are "being renegotiated" with lower rates soon after their initial execution, such that "it seems unlikely that" amending 2,000 contracts "would be unmanageable" for Securus. June 27 Letter at 12.

Inmate contracts are not "being renegotiated" unless they are close to expiry. The one exception to this rule is that in Indiana, the DOC agreed to accept new rates for debit calls after execution of the contract with T-Netix. *See* June 27 Letter at 6. At the time of contract, the Indiana DOC could not accommodate debit calling. After the debit systems were in place – three years later – the contract was amended slightly to adopt specific rates for these calls. *See id.* This situation is far from the norm in the inmate telecommunications industry. Moreover, the Indiana DOC arrangement represents not a contract renegotiation but simply a service addition. No other call rates were changed.

The rates in Securus's contracts are not routinely being changed prior to expiration, and to do so now would create an enormous disruption in the performance of its contracts. Entire contracts, and possibly the public bidding process, would have to be re-opened. To perform this onerous task in a mere 12 months would be impossible.

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Thank you for your consideration of this matter. Please do not hesitate to contact me with any questions or concerns you may have: 202.857.4534.

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<sup>5</sup> The June 27 Letter may also be suggesting that intrastate rates should subsidize the proposed \$0.25/\$0.20 per-minute interstate rate at facilities that experience "[t]he occasional interstate call." That result would likewise be inappropriate.

Very truly yours,

s/Stephanie A. Joyce  
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